

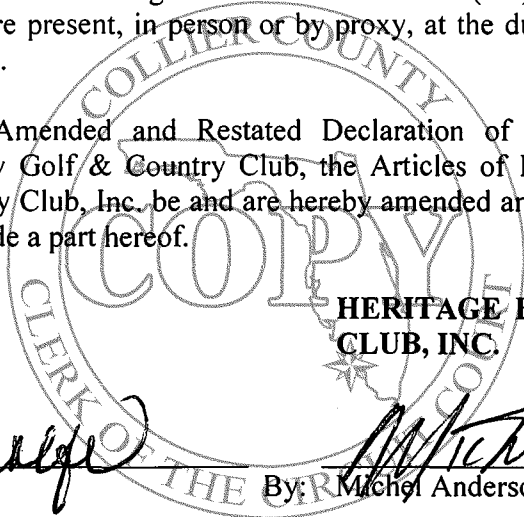
**NOTE: A red box indicates this section has been amended. Click within the red box to link to the amendment.**

**CERTIFICATE OF AMENDMENT**

**THE UNDERSIGNED** officers of Heritage Bay Golf & Country Club, Inc., a Florida corporation not for profit, hereby certify that at the duly called Annual Meeting of the members held on April 25, 2019, where a quorum was present, after due notice, the resolutions set forth below were approved by the votes indicated for the purposes of amending the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, Articles of Incorporation and Bylaws recorded in Official Records Book 4355, Page 1839, *et seq.*, and originally recorded at Official Records Book 3989, at Page 2218, *et seq.*, of the Public Records of Collier County, Florida. The Declaration is now further amended in part, and restated in its entirety, and identified as the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Bay Golf & Country Club, along with the Amended and Restated Articles of Incorporation of Heritage Bay Golf & Country Club, Inc., and the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc.

The following resolution was proposed, approved and adopted by at least a majority vote of the Directors at a duly called Board meeting and at least two-thirds (2/3) of those Members who are eligible to vote and who were present, in person or by proxy, at the duly called Annual Meeting at which a quorum was attained.

**RESOLVED:** That the Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, the Articles of Incorporation and Bylaws of Heritage Bay Golf & Country Club, Inc. be and are hereby amended and restated and adopted in the form attached hereto and made a part hereof.



**HERITAGE BAY GOLF & COUNTRY CLUB, INC.**

*Louise S. Metcalfe*  
Witness

*Michel Anderson*  
By: Michel Anderson, President

Print Name: Louise S. Metcalfe

Date: May 15, 2019

*[Signature]*  
Witness

Print Name: C. N. DAVIES

**HERITAGE BAY GOLF & COUNTRY CLUB, INC.**

*James A. Thomas*  
Witness

*Mary Jo Diegel*  
By: Mary Jo Diegel, Secretary

Print Name: James A. Thomas

Date: May 10, 2019

*A. G. Tambe*  
Witness

Print Name: Anjali Girish Tambe



Prepared by:

Christopher N. Davies, Esquire  
Cohen & Grigsby, P.C.  
Mercato – Suite 6200  
9110 Strada Place  
Naples, FL 34108

**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE BAY GOLF & COUNTRY CLUB. FOR PRESENT TEXT SEE THE EXISTING AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR HERITAGE BAY GOLF & COUNTRY CLUB RECORDED IN OFFICIAL RECORDS BOOK 4355, PAGE 1839, ET SEQ., PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA.**

**SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
HERITAGE BAY GOLF & COUNTRY CLUB**

The Club, as representatives of members in Heritage Bay Golf & Country Club pursuant to the amendment powers contained in the Declaration of Covenants, Conditions and Restrictions, and Florida Statutes, after proposed notice and discussion, and after recommendation and approval, file this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions.

**CONFIRMATION OF PRIOR STATEMENT OF DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS SUBMISSION:** The Owners of Living Units in Heritage Bay Golf & Country Club do hereby confirm the statements of the Declaration of Covenants, Conditions and Restrictions as reflected in the Public Records of Collier County, Florida as follows: Statement of Declaration of Covenants, Conditions, and Restrictions Submission, Official Record Book 3989, Page 2218, *et seq.*, and as later amended and restated and recorded in Official Records Book 4355, Page 1839, *et seq.*, and as further amended from time to time, all of which amendments are recorded in the Public Records of Collier County, Florida.

**WHEREAS** certain real property located within the Heritage Bay Development of Regional Impact (“DRI”), located in Collier County, Florida was developed, and a Community was created thereon of 1250 single-family homes, multi-family structures, and related recreational and other common facilities and amenities known as Heritage Bay Golf & Country Club; and

**WHEREAS** the legal description for the real property known as Heritage Bay Golf & Country Club (the “Club - Property”) is described in “Exhibit “G-1” to the original Declaration, and which is incorporated herein by reference; and

**WHEREAS** the Club promotes the general health, safety and welfare of residents, provides for the maintenance of the land comprising Heritage Bay Golf & Country Club, and the improvements thereon, and provides for preservation of the property values and the amenities, and the real property is subject to the protective covenants, conditions, restrictions, and other provisions hereinafter set forth; and

**WHEREAS** to provide a means for meeting the purposes and intents herein set forth, the Club has incorporated Heritage Bay Golf & Country Club, Inc., a Florida corporation not for profit (hereinafter the “Club”); and

**NOW THEREFORE** the Club hereby declares that the real property described in Exhibit “A” hereto, is and shall be owned, used, sold, conveyed, encumbered, demised and occupied subject to the provisions of this Declaration, as amended from time to time, which shall run with the Land and be binding on all parties having any right, title or interest in the real property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each present and future owner thereof. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust given in good faith and for value. Further, the express intent of the Club is that substantive contract rights created hereunder shall not be retroactively affected by legislation enacted subsequent to the recording of this Declaration unless the Declaration is amended accordingly.

**1. DEFINITIONS.** The following definitions shall apply to the terms used in this Declaration and its recorded exhibits, unless the context clearly requires another meaning.

**1.1 “Architectural Review Committee” or “ARC”** means the Architectural Review Committee as established and empowered in Section 6 of this Declaration.

**1.2 “Army Corp of Engineers Permit”** means Permit No. 199801232 (IP-MN) dated May 21, 1999, issued to Heritage Bay by the Army Corp of Engineers, as amended from time to time.

**1.3 “Articles”** as used herein, means the Articles of Incorporation of Heritage Bay Golf & Country Club, Inc., as amended from time to time. A copy of the Amended and Restated Articles of Incorporation is attached hereto as Exhibit “C,” and made a part hereof.

**1.4 “Assessment” or “Assessments”** means a share of the funds required for the payment of the expenses of the Club which from time to time is assessed against the Members, including without limitation annual assessments and special assessments, as, authorized by Section 9 of this Declaration.

**1.5 “Association” or “Club”** means Heritage Bay Golf & Country Club, Inc.

**1.6 “Board” or “Board of Directors”** means the Board of Directors of Heritage Bay Golf & Country Club, Inc.

**1.7 “Bylaws”** as used herein, means the Bylaws of Heritage Bay Golf & Country Club, Inc., as amended from time to time. A copy of the Amended and Restated Bylaws is attached hereto as Exhibit “D” and incorporated herein by this reference.

**1.8 “CDD” or “Heritage Bay CDD”** means and refers to the Community Development District, as defined in Chapter 190, Florida Statutes, that has been established for the purpose of constructing, owning and maintaining property or facilities in Heritage Bay.

**1.9** **“CDD Property”** means any and all real property and improvements which a CDD either owns, contracts, operates, administers or has jurisdiction over or any combination of the foregoing or otherwise administers pursuant to its responsibilities under Chapter 190, Florida Statutes, and the documents establishing the CDD. The term “CDD Property” shall include systems, facilities and services that the CDD may acquire, construct, maintain and finance over the years (which constitute projects or infrastructure improvements) which may or may not be owned by the CDD.

**1.10** **“Club Common Areas”** or **“Common Areas”** means any and all real property and improvements within the Club owned by, leased to, or dedicated to the Club for the use and benefit of its Members, as legally described in Exhibit “B” attached hereto and incorporated herein.

**1.11** **“Club Property”** means all real property comprising Heritage Bay Golf & Country Club, and the improvements thereon.

**1.12** **“Common Expenses”** shall mean the expenses for which Owners are liable to the Association as described in this Declaration and any other Governing Documents and include, but are not limited to, the costs and expenses incurred by the Association in administering, operating, maintaining, financing, or repairing, reconstructing, replacing or improving, the Association property or any portion thereof and improvements thereon, all other property owned by the Association and all costs and expenses incurred by the Association in carrying out its powers and duties hereunder or under any other Governing Documents. The cost for “communication services” as defined in Section 202.11, Florida Statutes, such as basic cable television programming services, telephone and/or internet services in bulk for all Living Units and certain Common Areas shall be a common expense.

**1.13** **“Common Surplus”** means the excess of all receipts of the Association, including but not limited to Assessments, rents, profits and revenues over the common expenses.

**1.14** **“Community Systems”** shall mean and refer to any and all television (cable, satellite or otherwise), telecommunication, internet access, alarm monitoring, utility or other lines, conduits, wires, fibers, satellites, amplifiers, towers, antennae, equipment, materials, installations and fixtures (including those based on, containing or serving future technological advances not now known), and serving the Association Property and Living Units.

**1.15** **“County”** or **“the County”** means Collier County, Florida.

**1.16** **“Declaration”** means the Declaration of Covenants, Conditions and Restrictions for Heritage Bay Golf & Country Club, Inc., as amended from time to time.

**1.17** **“DRI”** means and refers to the development order for Heritage Bay, a Development of Regional Impact (“DRI”), as amended from time to time, of which the Club Property is a part.

**1.18** **“Family”** means one natural person or two or more natural persons each of whom are related to each other by blood, marriage, or adoption and who customarily reside and live together and otherwise hold themselves out as a single housekeeping unit or not more than two natural persons who are not related to each other by blood or adoption, who customarily reside and live together and otherwise hold themselves out as a single housekeeping unit. The decision as to whether two persons reside and constitute a qualifying family unit shall be a matter for the Board of Directors in their sole and unbridled discretion. Once designated and accepted by the Board as a qualifying family unit, no change in persons so constituting the qualifying family unit may be made except for one time in any

calendar year and no more than three times in any constituent partner's lifetime, but in all events such change in partner shall be subject to the Board's approval in its sole and unbridled discretion. Further, the biological or adopted children of only one person shall be entitled to golf privileges if they meet all of the following conditions: (a) said child or children are age 21 or less; and (b) such child or children are not married or cohabitating with any third party; and (c) said children do not have custodial children of their own, (i.e., grandchildren of the member); and (d) said children reside with the owner on a permanent basis, or in the case of college or graduate students, at such times as the student is not enrolled in a college or university. If a Living Unit is owned by two or more persons who are not a "family" and described above, or is owned by an entity which is not a natural person, the owner shall be required to select and designate one (1) family as defined above to utilize the golf membership. The Club may restrict the frequency of changes in such designation when there is no change in ownership of the Living Unit.

**1.19** **"Governing Documents"** means this Declaration, and the Articles of Incorporation, Bylaws, and Rules and Regulations of the Club. In the event of a conflict in the interpretation of the Governing Documents, they shall be applied in the order of priority listed herein.

**1.20** **"Guest"** means any person who is physically present in, or occupies a Living Unit on a temporary basis at the invitation of the owner or other legally permitted occupant, without the payment of consideration.

**1.21** **"Heritage Bay"** is the name of the development that Heritage Bay Golf & Country Club is a part of and is sometimes referred to as the "Community."

**1.22** **"Heritage Bay Umbrella Association Documents"** or the **"Umbrella Documents"** is the Declaration of Covenants, Conditions and Restrictions for Heritage Bay recorded in O.R. Book 3968, Page 4031, Public Records of Collier County, Florida, and all exhibits recorded thereto, as amended from time to time.

**1.23** **"Institutional Mortgagee"** means:

(A) a lending institution having a first mortgage lien upon a Living Unit, including any of the following institutions: a Federal or State savings and loan or building and loan association, a bank chartered by a state or federal government, a real estate investment trust, a pension and profit sharing trust, a mortgage company doing business in the State of Florida, or a life insurance company; or

(B) a governmental, quasi-governmental or private agency that is engaged in the business of holding, guaranteeing or insuring residential mortgage loans (including without limitation the Federal National Mortgage Association), Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration and Veterans Administration and which holds, guarantees or insures a first mortgage upon a Living Unit.

**1.24** **"Lands"** means the land described in Exhibit "A" to this Declaration, as it may be amended from time to time.

**1.25** **"Lease"** when used in connection with a Living Unit, means the grant by the owner of the Unit of a temporary right of use of the Unit for valuable consideration.

1.26 **“Living Unit”** means any residential structure, including a single-family detached home or condominium unit, located within Heritage Bay Golf & Country Club and intended for use by one family as a place of residence.

1.27 **“Lot”** means one or more of the platted portions of land into which parts of Heritage Bay Golf & Country Club have been subdivided, upon each of which a single Living Unit has been constructed. It is synonymous with the word “parcel” as used in Chapter 720, Florida Statutes. Unless the context clearly requires a different interpretation, the term “Lot” shall be interpreted as if it were followed by the words “and the Living Unit constructed thereon.”

1.28 **“Member”** means a person who is entitled to membership in the Club, as provided in Section 2 of the Club Bylaws. Membership is mandatory for the owners of all Living Units.

1.29 **“Neighborhood”** means a condominium, or a group of single-family homes within Heritage Bay Golf & Country Club where all the Living Units are subject to a Declaration of Condominium or a Declaration of Covenants, Conditions, and Restrictions.

1.30 **“Neighborhood Association”** means a condominium association under Chapter 718, Florida Statutes, or a homeowners association under Chapter 720, Florida Statutes, operating a Neighborhood.

1.31 **“Neighborhood Association Common Areas”** means that real property, including any improvements thereon, which is owned or leased by, or dedicated to, a Neighborhood Association for the common use and enjoyment of its members. If the Neighborhood is a condominium, the term includes the common elements of the condominium and any real property owned by the condominium association.

1.32 **“Neighborhood Association Documents”** means any and all covenants, conditions, restrictions, and other provisions imposed by a recorded declaration or other instrument, applicable to one or more specific Neighborhoods to the exclusion of all others, including the recorded Declaration, Articles of Incorporation and Bylaws of the Neighborhood Association, all as amended from time to time.

1.33 **“Occupy”** when used in connection with a Living Unit, means the act of using a Living Unit as one’s place of residence for two (2) or more consecutive days. An **“Occupant”** is one who occupies a Living Unit, other than the owner or his family as defined above.

1.34 **“Owner”** means the record owner of legal title to any Living Unit.

1.35 **“Rules, and Regulations: Policies”** means the administrative rules, regulations and policies governing use of the Club Common Areas and procedures, for operating the Club, as adopted, amended and rescinded from time to time by resolution of the Board of Directors.

1.36 **“SEWMD”** means South Florida Water Management District.

1.37 **“Service Assessment”** means a charge against one or more Living Units for any service, material or combination thereof which may be provided by the Club for the use and benefit of the Owner(s) on a voluntary basis, such as contracting in bulk for repairs, services, materials or maintenance. The amount paid or incurred by the Club on behalf of the owners accepting or

receiving such material or service shall be a service assessment against the Living Units so benefited. An owner is deemed to have agreed to such assessment by the act of subscribing to, requesting, or accepting the material or service.

**1.38 “Structure”** means something built or constructed, or any piece of work artificially built up or composed of parts joined together in some definite manner, the use of which requires a more or less permanent location on the ground, or which is attached to something having a permanent location on the ground. The term shall be construed as if followed by the words “or part thereof.” The term includes, without limitation, all Living Units, swimming pools, spas, fences, flagpoles, antennas, basketball backboards, skateboard ramps, swing sets or other play equipment, and storage sheds.

**1.39 “Tract”** means any and all platted portions of the Club Property other than the Lots.

**1.40 “Voting Group”** means a group of members who are entitled to vote in the election of one (1) or more Directors of the Association, as more particularly described in Section 11.5 of this Declaration.

**1.41 “Voting Interests”** means the arrangement established in Section 2 of the Bylaws of the Club by which the owners of each Living Unit are entitled to vote in the affairs of the Club, whenever a vote of the owners is permitted or required as to any Club business.

**1.42 “Voting Representative”** means the individual(s) appointed by each Neighborhood Association to be responsible for performing the duties specified within the Club Governing Documents, including casting votes of the members (except for the election of Directors) pursuant to Section 2 of the Bylaws of the Club.

**1.43 “Water Management Permit”** means the Environmental Resource Protection Permit No. 11-02234-P issued by the South Florida Water Management District to Heritage Bay, which permit includes the maintenance of the Club’s surface water management system, and is recorded as Exhibit “E” to the Declaration of Covenants, Conditions, and Restrictions for Heritage Bay.

**2. GENERAL DEVELOPMENT PLAN.** The Community is a Planned Unit Development (“PUD”), comprising at least 687 acres of land including a 27 hole golf course and country club, together with single and multiple family dwelling units.

**2.1 Community Development District.** A Community Development District, as defined in Chapter 190, Florida Statutes, manages and provides certain urban infrastructure facilities and services, and has the authority to levy and collect fees, rates, charges, taxes and assessments to pay for, finance and provide said facilities and services. The term “assessment” as used in this Section refers to assessments as defined in Chapter 190, Florida Statutes, not as defined in this Declaration. The CDD is empowered to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities for basic infrastructure including without limitation: water management and control lands within the CDD and the connection of some or any of such facilities with potable water distribution systems; sewage collection and transmission systems; and waste water management facilities.



**2.2 Right to Use Club Common Areas.** The non-exclusive right to use the Club Common Areas shall be appurtenant to and shall run with each owner's membership in the Club, subject to this Declaration and its recorded exhibits. The Club has the right to enter into Agreements with the Umbrella Association and/or the CDD for the maintenance and operation of CDD Property.

**2.3 Owner and Member Compliance.** The protective covenants, conditions, restrictions and other provisions of this Declaration shall apply not only to the members, and persons to whom an owner has delegated his right of use in and to the Club Common Areas, but also to any other person occupying an owner's Living Unit under lease from the owner, or by permission or invitation, expressed or implied, of the owner or his tenants, licensees, invitees or guests. Failure of an owner to notify any person of the existence of the easements, covenants, conditions, restrictions, and other provisions of this Declaration shall not in any way act to limit or divest the right of the Club of enforcement of these provisions and, in addition, the owner shall be responsible for any and all violations of these provisions by his tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his tenants at any time.

**2.4 Members' Rights and Easements.**

(A) Every member of the Club shall have a non-exclusive right and easement for access to and the use and enjoyment of the Club Common Areas. The right and easement shall be appurtenant to and shall pass with the title to every Lot and Living Unit subject to any limitation set forth in this Declaration, including without limitation:

- (1) The right of the Club to determine the annual and special assessments to be paid by the Members;
- (2) The right of the Club to dedicate or transfer all or any part of the Club Common Areas to any governmental agency, public authority, or utility;
- (3) The right of the Club to grant easements over, across or through the Club Common Area or any part thereof;
- (4) The right of the Club to borrow money for the accomplishment of its purposes of improving the Club Common Areas, and in aid thereof, to mortgage Club Common Areas;
- (5) The right to take such steps as are reasonably necessary to protect Club Common Areas against foreclosure;
- (6) The right to enforce the Declarations, Articles of Incorporation and Bylaws of the Club; and any Rules and Regulations governing the use and enjoyment of the Club Common Areas adopted by the Club;
- (7) The right of the Club to charge use fees or membership fees;
- (8) The right of the Club to assist the Heritage Bay Umbrella Association in enforcing its rules and regulations.

**(B) Delegation of Rights.** Each owner may temporarily delegate his right of use in and to the Club Common Areas to his non-resident guests (if the guests are accompanied by the owner) or to tenants who reside in the Living Unit of the owner, but only to the extent and subject to conditions, limitations and restrictions as may be provided for in the Club Documents. Each owner of a Living Unit shall be financially and legally responsible for the actions of any person to whom the owner has delegated his right to use the Club Common Areas.

## **2.5 Conveyance and Use.**

**(A)** Any real property conveyed, leased, or the use of which has been granted to the Club as Club Common Areas is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of members of the Club.

**2.6 Non-Potable Water.** The Club has the exclusive right to be the permanent non-potable water supplier for irrigation services to the Club Common Areas, and any fees for irrigation of the Club Common Areas are a Club Common Expense.

**2.7 Irrigation with Treated Effluent.** All owners within the Community, by the act of purchasing, are deemed to have irrevocably consented to the irrigation of part or all of the Community with treated effluent, emanating from an approved treatment plant with a current operating permit from the State of Florida. The cost is a Club Common Expense.

**3. THE CLUB'S PURPOSES AND POWERS.** The primary purposes of the Club are to hold title to, operate and maintain the Club Common Areas, including without limitation the golf course, clubhouse and related recreation facilities, including certain pools within the Community; to enforce restrictive covenants applicable to the Community; to provide architectural and esthetic control; and to take such other action as the Club is authorized or required to take with regard to the Community pursuant to the Club Documents. The Club shall operate, insure, maintain and repair all property and related improvements designated as Club Common Areas. If required by governmental agencies, the Club shall accept the transfer of all permits, and assume responsibility for maintenance and monitoring of on-site and off-site wetland preserve areas located on the Common Areas (if any).

**3.1 Club Common Areas.** The Club shall operate and maintain the Club Common Areas as described in Exhibit "B," as amended from time to time. Club Common Areas are all portions of the Community that are not CDD Property and that are not part of a Neighborhood Association. Common Areas include, but are not limited to, all swimming pools that are not part of a Lot, entryways, certain roads not within Neighborhood Association Common Areas or the CDD, the clubhouse, golf course, maintenance facilities, golf cart facility and pro shop, fitness center, meeting rooms, aqua range, tennis courts and tennis pro shop, pickleball courts, bocce ball courts, food and beverage facilities and outlets and related facilities. The Club and/or the CDD shall also maintain environmental habitat and preservation areas, surface water drainage and management systems on the Club Common Areas, if maintenance responsibilities are delegated to it by the Umbrella Association. The Board of Directors may promulgate reasonable rules and regulations regarding use of the Club Common Areas consistent with the Club Documents. Use of Club Common Areas shall be available to all members and their invitees, guests, family members and tenants, subject to the rules and the Club Documents. The costs of operating, maintaining, repairing, insuring and protecting the Club

Common Areas and the facilities located thereon or connected therewith shall be assessed equally against all Living Units. The Club shall have, without limitation, the following powers:

- (A) To exercise the rights more particularly described in Section 4 below.
- (B) To allow public use of the golf course and clubhouse, and other recreational facilities. The Board of Directors may determine whether and to what extent public use of the golf course and other Club facilities will be allowed.
- (C) To lease, assign or otherwise transfer the operating rights to, and any and all profits from any restaurant, snack bar, pro shop or other facility on the Club Common Areas to a third party.
- (D) To restrict or prohibit the recovery of lost golf balls on and around the golf course and in water hazards and to sell or assign the exclusive right to do so to commercial enterprises.
- (E) To restrict or prohibit use of the cart paths, and the golf course generally, for jogging, cycling, walking pets or other activities not directly related to the playing of golf.
- (F) To enter into Agreements for the maintenance and operation of Club Property.

**3.2 Manager.** The Club may contract, employ and pay for the services of an entity or person to assist in managing its affairs and carrying out its responsibilities, and may employ other personnel as the Club shall determine to be necessary or desirable. These responsibilities may include but are not limited to the submission of proposals, collection of Assessments, keeping of records, issuing estoppels and mortgagee questionnaires, enforcement of rules and Maintenance, Repair and Replacement of the Common Areas with funds made available by the Association for such purposes.

**3.3 Personal Property.** The Club may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise.

**3.4 Insurance.** The Club at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary and as required in Section 12 below. The Club additionally shall cause all persons with access to Club funds to be insured or bonded with adequate fidelity insurance or bonds.

**3.5 Express and Implied Powers.** The Club may exercise any rights, powers or privileges given to it expressly by the Club Documents or by the law in effect at the time this Declaration is recorded, and every other right, power or privilege reasonably inferable therefrom. The powers and duties of the Association include those set forth in Chapters 617 and 720, Florida Statutes, and in the Governing Documents.

**3.6 Acts of the Club.** Unless the approval or affirmative vote of the members is specifically made necessary by some provision of applicable law or the Club Documents, all approvals or actions permitted or required to be given or taken by the Club may be given or taken by its Board of Directors, without a vote of the members. The officers and Directors of the Club have a fiduciary relationship to the Club and its members. A member does not have the authority to act for the Club by reason of being a member.

**3.7 Member Approval of Certain Litigation.** Notwithstanding any other provisions of the Club Documents, the Board of Directors shall be required to obtain the prior approval of at least a majority of the entire membership of the Club prior to the payment of, or contracting for the payment of, legal fees to any person engaged by the Club for the purpose of commencing any lawsuit, other than for the following purposes:

- (A) collection of assessments;
- (B) collection of other charges which members are obligated to pay;
- (C) enforcement of the Club Documents;
- (D) enforcement of the rules and regulations of the Club;
- (E) in an emergency, when waiting to obtain the approval of the members creates a substantial risk of irreparable injury to the Club or its members; or
- (F) filing a compulsory counterclaim.

**3.8 Articles of Incorporation.** The Amended and Restated Articles of Incorporation of the Club are attached as Exhibit "C."

**3.9 Bylaws.** The Amended and Restated Bylaws of the Club shall be the Bylaws attached as Exhibit "D" as they may be amended from time to time.

**3.10 Official Records.** The official records of the Club, as defined by Chapter 720, Florida Statutes, as amended, shall be maintained within the State of Florida and must be open to inspection and available for photocopying as provided for in Section 7 of the Bylaws. The Club may adopt reasonable written rules governing the frequency, time, location, notice, and manner of inspection, and may impose fees to cover the costs of providing copies of the official records, including, without limitation, the costs of copying. The Club shall maintain an adequate number of copies of the Club Documents, to ensure their availability to members and to prospective purchasers, and may charge its actual costs for reproducing and furnishing these documents to those persons who are entitled to receive them.

**3.11 Roster.** The Club shall maintain a current roster of names and mailing addresses of Owners, based upon information supplied by the Owners. Owners are responsible for notifying the Club of any change in their mailing address. All such information shall be in writing. A copy of the roster shall be made available to any member upon request, except any confidential information and exempt information as defined by Florida law shall not be provided to a member.

**3.12 Polling Places.** Accommodations may be made for the future use of building space within the Common Areas for the purposes of accommodating the function of an electoral polling place.

**3.13 Treated Effluent.** The Club may negotiate an agreement with any effluent supplier for the use of treated sewage or effluent within the project for irrigation purposes of the golf course and throughout the subdivision, including all common areas, neighborhood common areas, lots, units and condominium common element properties. The Club would be responsible for providing all on-site piping and pumping facilities from the point of delivery to the project, and negotiate with the effluent

supplier to provide full or partial on-site storage facilities, as required by the Florida Department of Environmental Protection consistent with the volume of treated wastewater to be utilized. All owners within Heritage Bay Golf & Country Club, by the act of purchasing, are deemed to have irrevocably consented to the irrigation of the Common Areas and Lots with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the State of Florida, Department of Environmental Protection, or other such agency with jurisdiction. The cost of such treated effluent and all administrative, operational, maintenance and support costs related to it, are Community Common expenses of the Club.

**3.14 Rules and Regulations: Policies.** Subject to this Declaration and any other applicable recorded instrument, the Club shall have the right and the power to develop, promulgate and enforce reasonable Rules and Regulations for the use and enjoyment of Club Common Areas. No Club Common Areas shall be used in violation of any Rule or Regulation adopted by the Club pursuant to Section 4.1(F) of the Bylaws. The Club shall also have the authority to adopt policies from time to time.

**3.15 Acquisition of Property.** The Club has the power to acquire property, both real and personal. The power to acquire personal property shall be exercised by the Board of Directors. The power to acquire ownership interests in real property shall be exercised by the Board of Directors, but only after approval of a majority of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained.

**3.16 Disposition of Property.** Any property owned by the Club, whether real, personal or mixed, may be mortgaged, sold, leased or otherwise encumbered or disposed of by the same authority as would be required to acquire it under Section 3.15 above.

**3.17 Community Development District.** Portions of Heritage Bay Golf & Country Club are subject to a Community Development District (CDD), as defined in Chapter 190, Florida Statutes. The CDD may provide and operate certain urban infrastructure facilities and services and have the authority to levy and collect fees, rates, charges, taxes and assessments to pay for, finance and provide such facilities and services. The term "Assessments" as used in this Section 3.17 refers to assessments defined in Chapter 190, Florida Statutes, not as defined in Chapter 617, Florida Statutes, or this Declaration. The CDD is empowered to acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain systems and facilities, including but not limited to, indoor and outdoor recreational, cultural and educational uses, security and mosquito control. There are plat dedications of such systems and facilities to entities other than the CDD. Said systems and facilities may instead be conveyed to the CDD. The Club reserves the right to amend the Club Documents in any way convenient or necessary to address CDD issues.

**3.18 Gate: Gatehouses: Entranceways.** Heritage Bay includes a gatehouse, gate, entranceway, and entry gates, which may be manned unless otherwise determined by the Board of Directors and required by the Governing Documents. The Association's responsibility for the cost to maintain and operate the entry gate and guardhouse shall be a Common Expense. The Association makes no representations whatsoever as to the security of the premises or the effectiveness of any entry gates. The Owners acknowledge that the entry gates are designed to control vehicle access only.

**3.19 Bulk Agreements.** The Board of Directors of the Association, by a majority vote pursuant to the applicable provisions of the Bylaws, shall have the power to enter into an agreement with an entity providing bulk services, including but not limited to, cable television and internet service to obtain such services on a “bulk rate” basis. Pursuant to such “bulk rate” agreement, every Living Unit within the property subject to this Declaration shall receive the bulk service specified in such agreement and any “bulk rate” fee or payment provided for in any such agreement which is to be paid by the Association to the provider shall be a Common Expense of the Association.

**4. CLUB MEMBERSHIP AND VOTING RIGHTS.** Every owner of record legal title to a Living Unit within the Community shall be a Golf member of the Club as further defined in Section 4.1 below. Golf membership is appurtenant to, and may not be separated from, ownership of a Living Unit. The rights, powers, duties and privileges of members shall be as set forth in this Declaration, and in the Articles of Incorporation and Bylaws of the Club and all members agree to comply with same.

**4.1 Classes of Membership.** The Club has one (1) class of voting membership, and two (2) classes of non-voting membership, as follows:

**(A) Golf Membership.** Every Owner of a Living Unit shall be a Golf member and Golf membership is an appurtenance to the Living Unit. Golf members shall be all owners of Living Units within the Community. Golf members have full rights of use in the Common Areas and facilities, including full golfing privileges. The number of memberships is 1250. Except for temporary delegations as provided in Section 4.4 below, a membership shall not be assignable and/or transferable by any method other than the sale, lease or conveyance of record legal title to the Living Unit to which it is appurtenant. Upon sale or other transfer of ownership of a Living Unit to which a membership is appurtenant, the transferor shall be deemed to have automatically assigned and transferred the membership with his property. A member’s rights to use the golf course and other recreation facilities shall be limited as set forth in this Declaration and in the Bylaws. Any attempt to separate the membership from the interest in real property upon which it is based shall be null and void.

**(B) Interim Membership.** The Board of Directors shall have the right, but not the obligation, to limit the number of interim members who are not owners or residents of the Community, and who shall have no voting rights. Interim memberships for golf are limited to One Hundred Twenty-Five (125) members and interim memberships for tennis are limited to One Hundred (100) members. While in good standing, such members have the right to enjoy the social and recreational facilities appropriate to their membership class. To remain in good standing, such members shall be obligated to timely pay all charges and annual dues in the amount established by the Board of Directors. Such memberships shall be good for not more than one year at a time, and may, upon expiration of any one-year term, be terminated at the discretion of the Board of Directors, with or without cause.

**(C) Transfer Members.** Transfer members shall have use rights to the Club Common Areas and golf course as a result of a membership being transferred to a lessee occupying a unit under a Lease. Transfer membership expires upon termination of the lease.

**4.1.1 “Member for the Day - Private Club”** In order to comply with the Florida State Alcoholic Beverages and Tobacco regulations relating to dispensing of alcoholic beverages pursuant to a private club liquor license, the Club may create a daily membership to facilitate dispensing of alcoholic beverages to daily guests of the Club. The Board shall be empowered to adopt rules and restrictions pertaining to the charges paid to the Club for daily membership. In all events, any daily guest who has been charge for and paid a greens fee for use of the golf course shall be considered a member for that day.

**4.2 Use of the Club Common Areas, Including the Golf Course.** The Owners of each Living Unit are entitled to only one (1) Golf membership. Use rights in the Club Common Areas, including the golf course for each such membership shall be limited to the persons comprising one (1) “family.” For purposes of this Section 4.2 only, “family” means one natural person or not more than two natural persons who are not related to each other by blood or adoption, who customarily reside and live together and otherwise hold themselves out as a single housekeeping unit. The decision as to whether two persons reside and constitute a qualifying family unit shall be a matter for the Board of Directors in their sole and unbridled discretion. Once designated and accepted by the Board as a qualifying family unit, no change in persons so constituting the qualifying family unit may be made except for one time in any calendar year and no more than three times in any constituent partner’s lifetime, but in all events such change in partner shall be subject to the Board’s approval in its sole and unbridled discretion. Further, the biological or adopted children of only one of the persons shall be entitled to golf privileges if they meet all of the following conditions: (a) said child or children are age 21 or less; and (b) such child or children are not married or cohabitating with any third party; and (c) said children do not have custodial children of their own, (i.e., grandchildren of the member); and (d) said children reside with the owner on a permanent basis, or in the case of college or graduate students, at such times as the student is not enrolled in a college or university. If a Living Unit is owned by two or more persons who are not a “family” as described above,” or is owned by an entity which is not a natural person, the owner shall be required to select and designate one (1) family as defined above to utilize the golf membership. The Club may restrict the frequency of changes in such designation when there is no change in ownership of the Living Unit.

**4.3 Association Rights and Easements.** Members in good standing have the non-exclusive right to use the Common Areas subject to:

- (A) The right of the Club, by and through its Board of Directors, to adopt the annual budget and to determine the annual assessments to be paid by members;
- (B) The right of the Club, by and through its Board of Directors, to charge any admission, use, or other fees for any Common Areas as the Board may deem appropriate. The fees may be higher for non-owners than for owners;
- (C) The right of the Club, by and through its Board of Directors, to suspend a member’s right to use Common Areas for the period during which any assessment or charge against the member’s Living Unit remains unpaid and past due, and for a reasonable period during or after any infraction of the Club’s rules and regulations;
- (D) The right of the Club, by and through its Board of Directors, to dedicate or transfer all or any part of the Common Areas to any governmental agency, public authority, or utility;

- (E) The right of the Club, by and through its Board of Directors, to grant easements over, across or through the Common Areas;
- (F) The right of the Club, by and through its Board of Directors, to open the Common Areas, including the golf course, for use by non-members of the Club, or non-owners;
- (G) The right of the Club, by and through its Board of Directors to borrow funds and to pledge the assets of the Club for the purpose of improving the Common Areas, and in aid thereof, to mortgage Common Areas as security for said loan. Notwithstanding the foregoing, the Board of Directors must obtain approval of a majority of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained in order to borrow funds equal to or greater than two percent (2%) of the Club's annual operating budget excluding reserves;
- (H) The right of the Club, by and through its Board of Directors, to close or restrict access to the golf course or other Common Areas for limited periods of time to conduct special events,;
- (I) The right of the Club, by and through its Board of Directors, to regulate parking and traffic on the private roads within the Community, including without limitation the use of access gates or speed bumps;
- (J) The provisions of this Declaration, the Articles of Incorporation and Bylaws of the Club; and any Rules, Regulations and Policies governing use and enjoyment of the Common Areas adopted by the Club;
- (K) The right of the CDD to exercise and enforce any and all powers authorized by Chapter 190, Florida Statutes; and
- (L) The right of the Club to dedicate or transfer ownership or control of all or any part of the Common Areas to a CDD or any other governmental agency, public authority, or utility.

**4.4 Delegation of Use Rights In Common Areas.** Guests initially accompanied by a Golf member shall have the right to use the Common Areas, but only to the extent provided in Section 2.6 of the Bylaws, or in the Club's rules and regulations, and subject to the conditions, limitations and restrictions as may be stated therein. A fee may be imposed for such usage delegation, not necessarily limited by or related to the cost of processing the delegation. Each member shall be financially and legally responsible to the Club for the actions and debts to the Club of any person to whom the member has delegated his right to use the Common Areas. The member may not delegate the obligation to pay Club assessments. Upon the lease of a Living Unit to which a membership is appurtenant, the lessor may retain the right to use the membership, in which case the tenant shall have no such rights. If a member delegates his privileges to a tenant residing in his Living Unit, the member shall not be entitled to use of the facilities, except as a guest of another Golf member, during the period of the delegation.

**4.5 Separation of Ownership.** The ownership of a Living Unit may not be separated or separately conveyed, nor may any person who does not own record legal title to at least one Living Unit, hold Golf membership in the Association.



**4.6 Credit.** The Club may implement a policy of not accepting cash payments, and may require that each member and resident guest open an account with a nationally recognized credit card, to which all purchases of goods and services from the clubhouse, pro shop, dining room and other facilities may be charged.

**4.7 Minimum Purchases.** The Club may implement a policy that requires each Golf member to purchase at least a minimum amount of food or beverages from the Club, or to be billed for the minimum amount.

**5. USE RESTRICTIONS.** The following restrictions, in addition to the rules and regulations hereafter promulgated by the Board of Directors, shall govern the use of property within the Club and the Club Common Areas and the conduct of the users. The Club shall operate, insure, maintain and repair all property and related improvements designated by the Declaration as Club Common Areas.

**5.1 Compliance with Laws: Nuisance.** The use of the Club Common Areas shall be consistent with existing law, the Governing Documents, and the Governing Documents of the Neighborhood Association. No person shall engage in any obnoxious, unpleasant or offensive activity, or any other activity which would be an unreasonable source of nuisance or annoyance to residents of the Club. The Club Common Areas shall not be obstructed, littered, defaced, damaged, destroyed or misused in any manner.

**5.2 Alterations of Club Common Areas.** No Neighborhood Association or its respective owners or occupants shall make any alteration or improvement of Club Common Areas, except as authorized, in writing, by the majority of the Board of Directors of the Club.

**5.3 Outdoor Cooking.** No barbecuing or outdoor cooking of any type shall be permitted on the Club Common Areas, except where the Association may in its discretion designate a place or provides facilities for cooking; If it does, then such activity may be undertaken only in conformity with the rules established for the use of such facilities.

**5.4 Attire.** Residents and guests may utilize Club recreation facilities only if attired in appropriate apparel that conforms to the rules and regulations pertaining to the use of such facilities, as same may from time to time exist.

**5.5 Camping.** No tents or camping facilities shall be permitted on the Club Common Areas.

**5.6 Signs.** No signs, banners, billboards or advertisements of any kind, including without limitation, those of Realtors, politicians, contractors or subcontractors, shall be erected or displayed anywhere within the Community, including in windows and on motor vehicles. The Board of Directors shall have the right to erect signs or allow signs to be displayed as it deems appropriate. Notwithstanding the foregoing, no Owner may erect or display any signs in or on any Living Unit, or structure, except that one (1) oval "For Sale" or one (1) oval "For Rent" sign no larger than ten (10) inches in height and no more than eighteen (18) inches in width is permitted. The sign shall conform to the drawing depicted on the attached sheet (see Exhibit "F") and shall have a dark green background with white lettering and numbering. The party seeking to erect or place a sign on their property shall be required to purchase the sign and sign post. Owner's right to install a sign shall be further subjected to the following restrictions and those which may be later promulgated by the Architectural Review Committee:

- (a) The sign shall only contain the telephone number and the name of either the homeowner or the real estate company listing the property, if any;
- (b) Telephone number letters shall not exceed four (4) inches in height and the lettering indicating the homeowner or real estate company shall not exceed two (2) inches in height;
- (c) The signs shall be oval in shape and shall have a dark green background with white lettering;
- (d) For single-family homes, one (1) oval "For Sale" sign may be located in the front of the property, no closer than fifteen (15) feet from the street pavement;
- (e) For condominiums, one (1) oval "For Sale" sign is permitted;
- (f) For single-family homes, villas, and condominiums, one (1) oval "For Rent" sign may be located in one (1) window of the home or condominium;
- (g) All signage must be removed from the site upon signing of a contract;
- (h) No "Sale Pending" or "Sold" signs are allowed;
- (i) Note: Notwithstanding the foregoing, the individual neighborhood associations may prevent, prohibit, or impose additional restrictions on the placement of signs in their respective neighborhoods;
- (j) The Architectural Review Committee may require that all signs installed or placed within the community be constructed or installed by a vendor designated and approved by the Association, in order to insure conformity with these restrictions.

If any sign is erected in violation of this provision, the Club, the CDD or any Neighborhood Association shall have the right to enter the property on which the sign is located and remove it, as well as levy a fine of \$100.00/day for each day's violation and the Club may suspend the violator's use privileges of the golf and community common areas. Said action to enter one's property and remove the sign, if necessary, shall be deemed expressly permitted by the property owner.

**5.7 Heritage Bay CDD Lakes.** No skiing, boating or swimming is allowed in any of the Heritage Bay CDD lakes. Fishing is generally allowed at the individual's own risk, on a "catch and release basis" only. In no event shall fishing be allowed or permitted on lands abutting the golf course property or on or off of bridges and other similar structures.

**WARNING: ALLIGATORS AND OTHER DANGEROUS WILDLIFE MAY OCCUPY THE LAKES AND PORTIONS OF THE COMMON AREAS. NEITHER THE CLUB, NOR THE CDD ARE LIABLE FOR ANY DAMAGE OR INJURY CAUSED BY SUCH WILDLIFE.**

**5.8 DRI.** The Club Property may be used for those purposes provided in the DRI.

**5.9 Subdivision and Regulation of Club Property.** No Lot or Living Unit may be divided or subdivided without the express written consent of the Club. No owner or Neighborhood Association shall initiate, undertake or attempt to inaugurate or implement a variation from, modification to, or amendment of the DRI or any other governmental plans, land development regulation, development orders or development permits applicable to the Club, or to any Lot, Living Unit or Parcel. Nothing here is intended to prohibit judicial partition of a Lot, Living Unit or Parcel owned by two or more persons.

**5.10 Surface Water Management Systems, Lakes and Wet Retention Ponds.** The CDD shall be responsible for maintenance of all surface water management systems.

(A) No structure of any kind (including docks) shall be constructed or erected in or on, nor shall an owner or Neighborhood Association in any way change, alter, impede, revise or otherwise interfere with the flow or volume of water in, any portion of any water management area including, but not limited to lakes, ponds, swales, drainage ways, or wet retention ponds or areas intended for the accumulation of runoff waters, without the specific written permission of the Heritage Bay CDD.

(B) No owner, Neighborhood Association or other person shall unreasonably deny or prevent access to water management areas for maintenance, repair, or landscaping purposes by the Club, or the CDD or any appropriate governmental agency, that may reasonably require access. Nonexclusive easements therefore are hereby specifically reserved and created.

(C) No Lot, Parcel or Neighborhood Common Area shall be increased in size by filling in any lake, pond or other water retention or drainage areas which it abuts. No person shall fill, dike, rip-rap, block, divert, establish or remove plantings, or change the established water retention and drainage areas that have been or may be created without the prior written consent of the CDD. No person other than the Club may draw water for irrigation or other purposes from any lake, pond or other water management area, nor is any boating, swimming, or wading in such areas allowed.

(D) All Stormwater Management Systems and Conservation Areas, excluding those areas (if any) maintained by the County, will be the ultimate responsibility of the Club or CDD. The Club or CDD may enter any Lot, Living Unit, Parcel, Umbrella Association Common Area or Neighborhood Common Area and make whatever alterations, improvements or repairs are deemed necessary to provide, maintain, or restore proper surface water management. The cost may be an expense of the Club or CDD. NO PERSON MAY REMOVE NATIVE VEGETATION THAT MAY BECOME ESTABLISHED WITHIN THE CONSERVATION AREAS. "REMOVAL" INCLUDES DREDGING, APPLICATION OF HERBICIDE, PULLING AND CUTTING.

(E) Nothing in this Section shall be construed to allow any person to construct any new water management facility, or to alter any Stormwater Management Systems or Conservation Areas, without first obtaining the necessary permits from all governmental agencies having jurisdiction, including South Florida Water Management District.

(F) The South Florida Water Management District shall have the right to take any and all action available (including civil action for an injunction and penalties) against the CDD and

the Club to compel compliance with all permits related to the surface water management system and/or in mitigation thereof, and the conservation areas contained in the Umbrella Common Areas.

**DUE TO NATURAL CONSEQUENCES, WHICH INCLUDE, BUT ARE NOT LIMITED TO, WIND AND WAVE ACTION, ALL HOMEOWNERS ARE HEREBY PLACED ON NOTICE THAT PROPERTIES ADJACENT TO THE LAKE AND/OR WATER BODY BANK AREAS AND THE LAKE AND/OR WATER BODY BANK AREAS THEMSELVES MAY BE SUBJECT TO EROSION, AVULSION, ALLUVION, ACCRETION, DERELICTION AND/OR RELICTION.**

**THEREFORE, MAINTENANCE, REGRADING AND/OR OTHER REPAIRS MAY BE REQUIRED TO MAINTAIN THE PROPERTIES ADJACENT TO THE LAKE AND/OR WATER BODY BANK AREAS AND THE LAKE AND/OR WATER BODY BANK AREAS THEMSELVES IN THEIR ORIGINAL STATE.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY, THE LAKE AND/OR WATER BODY BANK AREAS ARE SUBJECT TO THE SAME MAINTENANCE, REPAIR AND/OR REPLACEMENT PROVISIONS AND ARE THE RESPONSIBILITY OF THE HERITAGE BAY CDD OR THE CLUB.**

**NOTWITHSTANDING ANYTHING TO THE CONTRARY, PROPERTIES ADJACENT TO THE LAKE AND/OR WATER BODY BANK AREAS ARE SUBJECT TO THE MAINTENANCE, REPAIR AND/OR REPLACEMENT PROVISIONS SET FORTH IN THE GOVERNING DOCUMENTS AND MAY BE THE RESPONSIBILITY OF THE OWNER AT HIS OR HER OWN COST.**

**NEITHER THE CLUB NOR THE CDD SHALL BE LIABLE IN ANY WAY FOR ANY MAINTENANCE, REGRADING AND/OR OTHER REPAIRS ON ACCOUNT OF SUCH EROSION, AVULSION, ALLUVION, ACCRETION, DERELICTION AND/OR RELICTION.**

**LOTS AND PARCELS MAY CONTAIN OR ABUT CONSERVATION AREAS, WHICH ARE PROTECTED UNDER ENVIRONMENTAL RESOURCE PERMIT. THESE AREAS MAY NOT BE ALTERED FROM THEIR PRESENT CONDITIONS EXCEPT IN ACCORDANCE WITH THE RESTORATION PROGRAM INCLUDED IN THE ENVIRONMENTAL RESOURCE PERMIT, OR TO REMOVE EXOTIC OR NUISANCE VEGETATION, INCLUDING WITHOUT LIMITATION MELALEUCA, BRAZILIAN PEPPER, AUSTRALIAN PINE, JAPANESE CLIMBING FERN; CATTAILS, PRIMROSE WILLOW, AND GRAPE VINE. THE CLUB WILL BE RESPONSIBLE FOR PERPETUAL MAINTENANCE OF SIGNAGE REQUIRED BY THE ENVIRONMENTAL RESOURCE PERMIT ISSUED BY SOUTH FLORIDA WATER MANAGEMENT DISTRICT, WHICH MAINTENANCE WILL BE MAINTAINED TO THE GREATEST DEGREE LAWFUL BY THE CLUB.**

**5.11 Conservation Areas.** The Club shall be responsible for the continuous implementation, management, maintenance, monitoring and reporting of the management plan adopted by the U.S. Army Corps of Engineers Permit (if any). No person shall undertake or perform any activity in Conservation Areas described in the approved permits and Plats of the Club Property, or remove

native vegetation that becomes established within the Conservation Areas. Prohibited activities within Conservation Areas include the removal of native vegetation, excavation, placement or dumping of soil, trash or land clearing debris, and construction or maintenance of any building, Living Unit or other structure. "Removal of native vegetation" includes dredging, application of herbicides, and cutting.

**5.12 Open Space.** Any real property subjected to this Declaration and designated as open space, landscape buffer, preserve area, Conservation Area or words of similar import on any plat, declaration of covenants and restrictions, site plan, permit or other document shall be preserved and maintained by the owner of such land as open space. If such land or an easement over such land has been conveyed or dedicated to the Club or a Neighborhood Association, the Club or Neighborhood Association shall preserve and maintain such land. No development may occur on such land except structures or improvements which promote the use and enjoyment of the land for open space purposes.

**5.13 Lawns, Landscaping; Irrigation Systems.** Except for designated Conservation Areas, buffer zones, open space or other similar areas, all areas not covered by structures, walkways or parking facilities shall be maintained by their owners as lawn or landscaped areas to the pavement edge of any abutting streets and to the waterline of any abutting lakes, canals or water management areas. Stone, gravel, or paving may not be used as a substitute for grass or landscaping unless first approved by the Club. Certain areas under the DRI shall remain in a natural or unimproved state. All lawns and landscaping shall be kept in good condition by the owner. Lawns must be regularly cut and mulched areas regularly re-mulched. The main irrigation line may be owned by and thus be the responsibility of the Club. The components of the irrigation system serving each individual Lot, Neighborhood Association Common Area, Member Common Area, Club Common Area or Commercial Parcel, including but not limited to the tap into the main line, timers, switching devices and heads shall be the responsibility of the owner or operator of the real property the irrigation line is located on. The Club shall have the right, at their sole discretion to adopt a schedule of irrigation times and duration of irrigation, subject to intervention by the SFWMD. The Club may also be responsible for irrigation of certain highway medians not owned by it, and the cost shall be a Common Expense of the Club.

**5.14 Maintenance of Premises.** High weeds, thick underbrush, high grass or other unsightly vegetation shall not be permitted to grow or remain upon any Lot or Common Area, except in Conservation Areas and other areas designated by the DRI to remain in a natural state. No refuse or waste shall be allowed to be placed or suffered to remain upon any Lot, Parcel, Tract or Neighborhood Association Common Area. If an owner, Member Association or Neighborhood Association permits such weeds, high grass, underbrush or other unsightly growths, and fails to correct same after five (5) days' notice by the Club, the Club shall have the right to enter upon the premises and make such corrections and shall charge the owner or Association for the cost of the corrections. Said charge, until paid, shall be a lien against the offending Lot, Parcel, Member Association Common Area or Neighborhood Association Common Area. All lawns, landscaping and sprinkler systems and all structures, improvements and appurtenances shall at all times be kept in safe, and attractive condition, and all structures shall be maintained in a finished, painted and attractive condition.

**5.15 Litter.** In order to preserve the beauty of the Club, no garbage, trash, refuse or rubbish shall be deposited, dumped or kept within the Club except in closed containers, dumpsters or other garbage collection facilities deemed suitable by the Board, or in proper-sized, closed plastic bags for curbside pickup as required. All containers, dumpsters and other garbage collection facilities shall be screened from view, kept in a clean condition, and without noxious or offensive odors emanating.

**5.16 Walls, Fences, Hedges, etc.** No wall, fence, hedge or other divider shall be constructed anywhere in the Club unless its height, length, type, design, composition, material and location shall have first been approved in writing by the Club. No wall, fence, hedge, or other divider shall be constructed or maintained at a height of more than six feet above the ground level of any Lot, Parcel or Neighborhood Association Common Area adjoining the Club Common Areas. Height shall be measured from the finished grade of adjoining developed property. Any dispute as to height, length, type, design, composition or material shall be resolved by the Club's Board of Directors, whose decision shall be final. Approval shall not be given for the construction of any wall, fence, hedge or other divider which materially interferes with the water view or golf course view directly behind a Lot or Living Unit.

**5.17 Driveways and Parking Areas.** Driveways and parking areas must be paved with concrete, paver blocks, or another surface approved by the Club. Maintenance and repair of all driveways, parking and other paved parking facilities (except driveways serving only one single-family home) shall be the responsibility of the Club (if located in the Club Common Areas) or the responsibility of the Neighborhood Association (if located in a Neighborhood Common Area). Parking areas and driveways must be kept clean and free from excessive oil, rust or other unsightly stains.

**5.18 Color.** No exterior colors or change in exterior colors shall be permitted on any Club Common Property structure that, in the judgment of the Board of Directors of the Club, would be inharmonious, discordant or incongruous with the Club Property or a particular Neighborhood.

**5.19 Underground Utilities.** Lines or wires for communications or the transmission of electric current shall not be constructed, or placed, or permitted to be placed within the Club, unless the same shall be protected cables; all such lines or wires which are not located in buildings shall be constructed or placed and maintained underground, unless otherwise approved in writing by the Club. No water pipe, gas pipe, sewer pipe, drainage pipe or storage tank shall be installed or maintained above the surface of the ground, except hoses and movable pipes used for irrigation purposes.

**5.20 Potable Water Supply; Wells; Water Rights.** Each Living Unit or Structure shall be equipped with dual water lines, one of which shall be designated to utilize non-potable water. All underground irrigation systems must be connected to the non-potable water line and all outside spigots must be connected to the potable water line. Each owner shall be required to connect the water lines on his Lot, Parcel or Tract to the lines of the utility provider(s) providing service to the Club. No owner may install or operate a private well. The Club shall have the exclusive right to develop and utilize the ground and surface water resources of the Club for any legal purpose, including the transport and use of such waters beyond the Club, and the conveyance of any Lot, Living Unit or Parcel does not include the right to develop or utilize any ground water or sub surface water resources within such Lot or Living Unit.

**5.21 Temporary Factory-Built or Existing Structures.** No structure of any kind of what is commonly known as “factory-built,” “modular,” or “mobile home” type construction shall be erected. No tent, trailer or temporary structure shall be permitted unless its size, appearance and temporary location have first been approved by the Board of Directors of the Club.

**5.22 Antennas and Flagpoles.** No outside television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot, Living Unit, Parcel or Tract or upon any improvements thereon, unless expressly approved in writing by the Neighborhood Association and the Club, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000, as amended from time to time, promulgated under the federal Telecommunications Act of 1996, as amended from time to time. The Club shall be empowered to adopt rules governing the types of antennae, restrictions relating to safety, location and maintenance of antennae. The Club may adopt and enforce reasonable rules limiting installation of permissible dishes or antennae to side or rear yard locations, not visible from the street or neighboring properties, and integrated with the residence, structure and surrounding landscape, to the extent that reception of an acceptable signal would not be unlawfully impaired by such rules. Antennae shall be installed in compliance with all federal, state and local laws and regulations, including zoning, land-use and building regulations. A flagpole, for display of the American Flag, the State of Florida or the United States Army, Navy, Air Force, Marines, or Coast Guard, or a POW-MIA flag, or others as approved by the Board of Directors, may be permitted if its design and location are first approved by the Club. An approved flagpole shall not be used to mount an antenna. This provision is intended to protect residents from unreasonable interference with television reception, electronic devices, and the operation of home appliances, which is sometimes caused by the operation of ham radios, CB base stations or other high-powered broadcasting equipment.

**5.23 Outdoor Equipment.** All garbage and trash containers, oil tanks, bottled gas tanks, swimming pool and spa equipment and housing and sprinkler pumps and other such outdoor equipment must be underground, or placed in areas not readily visible from adjacent streets, or adequate landscaping must be used as screening around these facilities and maintained by the owner, or Neighborhood Association.

**5.24 Clothes Drying Area.** Outdoor clothes drying areas are not allowed unless the location and design are approved in writing by the Club.

**5.25 Lighting.** Exterior lighting of structures or landscaping shall be accomplished in accordance with plans approved in writing by the Club. No spotlights, floodlights or similar high intensity lighting shall be placed or utilized upon any Lot, Parcel or Tract which in any way will allow light to be reflected on any other Lot, Parcel or Tract or the improvements thereon, or upon any Club Common Areas or any part thereof, without the approval of the Club. Other types of low intensity lighting, including normal and customary holiday lightning and decorations, which do not unreasonably disturb the other owners or occupants of the Club, shall be allowed.

**5.26 Air Conditioners.** Wall or window air conditioning or heating units are not permitted in the Club.

**5.27 Solar Collectors: Roof Vents.** Solar collectors, roof vents and other installations on the roofs of structures, shall be permitted only at locations approved in writing by the ARC, and may be required to be screened from view by landscaping or other suitable visual barrier.

**5.28 Trucks, Commercial Vehicles, Recreational Vehicles, Motor Homes, Mobile Homes, Boats, Campers, Trailers and Other Vehicles.**

(A) No commercial vehicle of any kind shall be parked in the Community except for construction or service vehicles temporarily present on business. The term “commercial vehicle,” as restricted under this subsection, is defined as meaning all vehicles of every kind whatsoever which, from the viewing the exterior of the vehicles or any portion thereof, shows or tends to show any commercial markings, signs, displays, equipment, or otherwise indicates a commercial use. Law enforcement and emergency vehicles owned or operated by residents or bona fide guests within the community shall be considered a permitted vehicle.

(B) No boat, trailer, semitrailer, or house trailer of any kind, camper, mobile home, motor home, bus, truck, truck camper, pick-up truck or disabled, inoperative or unlicensed motor vehicle of any kind may be parked or kept in the Community unless it is kept fully enclosed inside a structure or in an area designated for that purpose. For purposes of this paragraph only, an open carport shall not be deemed a structure or an area designated for such, if any. House trailers, semi-trailers, campers, buses, motor homes, mobile homes, truck campers, and the like are permitted to be parked in the Community for loading and unloading purposes only, and then for a maximum of 12 hours. Parking for longer periods of time may be permitted, only with the prior written approval of the Board of Directors.

(C) No motor vehicle shall be parked anywhere other than on paved or other areas designated for that purpose, or in garages. Parking on lawns or landscaped areas is prohibited.

(D) No motor vehicle shall be used as a domicile or residence, either permanent or temporary.

(E) Passenger automobiles, vans and light pick-up trucks with single rear wheels and no more than one (1) ton designation, in a presentable condition, and which will fit within an enclosed garage, shall be permitted. The term “vans and light pick-up trucks” is defined to mean vehicles with no more than one (1) ton, rear single wheels or less rated weight carrying capacity.

(F) Paragraphs (A) through (E) shall not be deemed to **prohibit** any temporary facility permitted by Section 5.21 above.

(G) Any vehicles parked in violation of this Section 5.28 shall be subject to being towed away at the owner’s expense.

**5.29 Living Units: Residential Use.** Each Living Unit shall be used as a single-family residence and for no other purpose. No business or commercial activity shall be conducted in or from any Living Unit, nor may the address or location of the Living Unit be publicly advertised as the location of any business or commercial activity. This restriction shall not be construed to prohibit any owner



from maintaining a personal or professional library, from keeping personal business or professional records in his Living Unit, or from handling personal, business or professional telephone calls and written correspondence in and from his Living Unit. Such uses are expressly declared customarily incident to residential use.

**5.30 Leasing of Living Units.** No Living Unit may be leased or rented for a period of less than thirty (30) consecutive days. Any advertising or listing of a Living Unit for lease or rental shall state that the minimum lease or rental period is thirty (30) consecutive days. Landlord is obligated to sufficiently assure the Board that no Home will be occupied by any sexual offender or predator or anyone who has been arrested or adjudicated as a sexual offender or predator. Neighborhood Covenants may establish stricter standards for particular Neighborhoods. Occupancy of Living Units is controlled by the Neighborhood Associations. If authorized by its governing Declaration, a Neighborhood Association may run background checks on any proposed lessee.

**5.31 Pets and Animals.** Not more than two (2) commonly accepted household pets such as a dog or cat, and reasonable numbers of tropical fish or caged birds may be kept in a Living Unit, subject to other reasonable regulation by the Club, or Neighborhood Association. All animals shall be leashed (if outdoors), or kept within the Living Unit and shall not be permitted to roam free. The Club may restrict the walking of pets to certain areas. Pets are not permitted on any golf course at any time. Owners who walk their pets on Club, or Neighborhood Common Areas must clean up after their pets. Commercial activities involving pets, including without limitation, boarding, breeding, grooming or training, are not allowed. The ability to keep a pet is a privilege, not a right. If in the opinion of the Board, any pet becomes the source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the owner, upon written notice, may be required to remove the pet from Club Property. Pets may not be left unattended or leashed in yards or garages or on porches or lanais.

Notwithstanding the foregoing, pit bull and pit bull mix dogs or other recognized aggressive breeds of dogs shall be prohibited regardless of size or weight. A pit bull or pit bull mix dog is defined as any dog that, in the sole and exclusive discretion of the Board, has the appearance and characteristics of being predominately and commonly referred to as a "pit bull" regardless of the opinion of any veterinary doctor. Any Unit Owner who keeps or maintains any pet, in exchange for and in consideration of the privilege to keep the pet, hereby indemnifies and holds the Association and each Unit Owner free and harmless from any loss, claim or liability of any kind of character of whatever nature arising from or related to the keeping or maintain of such pet on Club Property.

**5.32 Nuisances.** Nothing may or shall be done which is, or may become, a source of unreasonable annoyance or nuisance to residents of any Neighborhood. Any question with regard to the interpretation of this Section shall be decided by the Board of Directors whose decision shall be final.

**5.33 Correction of Health and Safety Hazards.** Any conditions of the physical property which are reasonably deemed by the Board of Directors to be an immediate hazard to the public health or safety may be corrected as an emergency matter by the Club, and the cost thereof shall be charged to the responsible owner or Association.

**5.34 Neighborhood Association Assessments and Covenants, Restrictions, and Rules.** Because the financial health and well-being of each Neighborhood is integral to the purposes of this

Declaration, each Owner covenants and agrees to timely pay all monetary obligations owing by such Owner to any Neighborhood Association pursuant to applicable Neighborhood Association Documents. In addition, each Owner covenants and agrees to abide by all Neighborhood Association covenants, restrictions, and rules governing use of Living Units and Neighborhood common areas. In the event any Owner is delinquent in the payment of any monetary obligation to a Neighborhood Association, then upon recordation of a lien by such Neighborhood Association against a Living Unit, the Owner of such Living Unit shall be deemed to have breached this covenant. Upon a breach of this covenant by any Owner, the Club may take all available enforcement action against such Owner, including but not limited to the exercise of the Club's right to suspend the Club Common Area use rights of such Owner, his Family, Guests, and tenants.

## **6. ARCHITECTURAL AND AESTHETIC CONTROL OF NEIGHBORHOOD ASSOCIATION STRUCTURES, COMMON AREAS AND LANDSCAPING**

**6.1 General.** No building structure or other improvement shall be erected or altered, nor shall any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any Neighborhood Association structure, Living Unit, or Neighborhood Common Area be performed without the prior written approval of the ARC. In obtaining said written approval, an owner or any other person applying shall comply with all applicable requirements and procedures.

**6.2 Architectural Review Committee.** The architectural and aesthetic review and control functions of the Neighborhood Associations shall be administered and performed by the Architectural Review Committee (ARC). The ARC shall consist of not less than three (3) individuals, who need not be members of the Club, the term of office, composition, compensation (if any), qualifications and meeting procedures of the ARC shall be as provided in Section 6 of the Bylaws.

**6.3 Powers.** The ARC shall have the power, subject to and limited by the guidelines of the approved regulatory permits of South Florida Water Management District (Permit No. 26-00736-5-02), the County, the U.S. Army Corps of Engineers and the PUD, to:

(A) Propose the adoption, modification or amendment by the Board of Directors, of written Design Review Guidelines which shall set forth such things as design requirements, landscape materials, construction standards and colors and materials which the ARC finds acceptable. Said Guidelines shall be consistent with provisions of this Declaration, and shall not be effective until adopted by at least a majority of the whole Board of Directors at a meeting duly called and noticed. Notice of any adoption, modification or amendment of Design Review Guidelines, including a verbatim copy of the proposed modification or amendment thereof, shall be mailed to each Neighborhood Association at least thirty (30) days prior to the Board meeting at which such action is to occur;

(B) Require submission to the ARC of complete plans and specifications for any building, structure, or other improvement proposed to be erected or altered, or any proposed grading, excavation, tree or other landscape material removal or installation, change of exterior color or other work which materially alters the exterior appearance of any Neighborhood Association structure, or Neighborhood Association Common Area. The ARC may also require submission of samples of building materials or colors proposed, and

may require such additional information as may reasonably be necessary for the ARC to fully evaluate the proposed work;

(C) Approve or disapprove the erection or alteration of any building, structure or other improvement; or any grading, excavation, landscaping, change of exterior color, or other work which in any way materially alters the exterior appearance of any Neighborhood Association structure, Lot, Living Unit or Neighborhood Common Area. All decisions of the ARC shall be forwarded in writing to the applicant and the Board. Any person aggrieved by a decision of the ARC shall have the right to make a written appeal to the Board within thirty (30) days after notification of the decision. The determination by the Board, upon prompt review of any such decision, shall, in all events, be final, and shall not be unreasonably delayed;

(D) Adopt procedures and a schedule of reasonable fees for processing requests for ARC review. Fees, if any, shall be payable to the Club, in cash or check, at the time the request is submitted to the ARC; or

(E) Adopt procedures for inspecting approved changes during and after construction, to ensure conformity with approved plans.

**6.4 Enforcement.** Any decisions of the ARC shall be enforced by the Neighborhood Association involved, as well as by the Club.

**7. EASEMENTS.** In addition to the easements created elsewhere herein, and those already of public record at the time this Declaration is recorded, easements are hereby provided for:

**7.1 Utilities, Services and Support.** Each Lot, Living Unit, Tract and Parcel and the Common Areas (except Conservation Areas) and Neighborhood Common Areas is and are hereby subjected to easements for public services, communications, and telecommunications and utilities purposes including, but not limited to, fire, police protection, and emergency services, garbage and trash removal, potable and non-potable water, sewage, telephone, electric and gas service, lake maintenance, internet and cable television. The utilities and governmental agencies having jurisdiction, the CDD and their employees and agents, shall have the right of access to any Lot, Living Unit, Dwelling Unit, Tract, or the Common Areas in furtherance of such easements. The easement areas on any Lot or Tract whether or not shown on any plat, shall at all times be properly maintained by the owner, whether or not the utility or service company properly maintains the easement area.

(A) There is hereby reserved, for the purpose of installing, operating and maintaining governmental, public or private utility facilities those easements described herein and those shown upon the recorded plat of the Community, and there are also reserved such easements and rights-of-way for any other purposes as the Club in its sole discretion may in the future grant.

(B) If any agreement is entered into by the Club for the exclusive provision of System Services or other services as described in either Section 7.2, 7.3 or both below, it shall be the affirmative obligation of the Club to grant all appropriate and reasonably necessary easements for the furnishing of those services; and upon the expiration or termination of such

agreement, to provide subsequent or alternate easements so as to insure the continuous accessibility and availability to the Club, of those services.

**7.2 Communications Systems.** The Club hereby reserves for itself and its successors, assignees and licensees, the right, without obligation, to construct or install over, through, under, across and upon any portion of the Club Property including Club and Neighborhood Association Common Areas, and all structures thereon for the use and benefit of the owner and authorized guests, invitees, tenant and family members, communications services as defined in Section 202.11, Florida Statutes, including but not limited to cable, internet and/or telecommunications receiving and distribution systems and electronic surveillance systems, emergency, medical and surveillance monitoring, or alarm systems (all or any part of which shall be referred herein collectively as the "System"). The Club shall have and hereby reserves to itself and its designees, successors, assignees and licensees, a perpetual and exclusive right, privilege, easement and right-of-way for the installation, construction and maintenance of the System (the scope, extent, size and location of which over, across, upon and through the Community shall be determined solely by the Club together with a perpetual and exclusive right and privilege of:

- (A) Unlimited ingress and egress thereto for installing, constructing, inspecting, maintaining, altering, moving, improving and replacing the facilities and equipment constituting the System including, without limitation, any towers, antennas, conduits, wires, cables, lines, panels, boxes, housings, connections, insulators and amplifiers necessary or desirable to receive and distribute System services including, without limitation, telecommunications, electronic banking, surveillance, fire, police and emergency medical protection.
- (B) Each Lot and Living Unit is subject to a permanent easement in favor of adjoining or adjacent Lots and Living Units for lateral and adjacent support.
- (C) Each Lot and Living Unit is subject to a permanent easement in favor of the Club to remove and/or destroy invasive exotic vegetation species.

**7.3 Contracts With Service Providers.** The Club shall have the right to enter into Contracts for the exclusive provision of the System. Any such contract for cable television or other similar services shall provide, and if it does not, shall be deemed to provide, that during any period of occupancy of Living Unit by a hearing impaired or legally blind owner who does not occupy the Living Unit with a non-hearing impaired or sighted person, said owner may refuse or discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such Living Units, the owners shall not be required to pay any charge related to such service.

**7.4 Easements for Playing Golf.** Non-specific, non-exclusive easements are hereby created for the benefit of users of the golf course over all Lots, Living Units, Neighborhood Common Areas, and Common Areas adjacent to the golf course, to permit every act necessary, incidental, or appropriate to the playing of golf. These acts include, without limitation, the recovery by golfers of errant golf balls, the flight of golf balls over and across such Lots, Living Units or Common Areas, the landing of errant golf balls upon the Club Common Areas, the use of necessary and usual golf carts and maintenance equipment upon the golf course, the usual and common noises and other disturbances created by maintenance of the course and the playing of the game of golf, including occasional tournaments, together with all other common and usual occurrences normally associated with the existence and operation of a golf course.

**7.5 Waiver and Disclaimer Regarding Golf Course.** Each Owner of a Living Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is hereby deemed to acknowledge and accept the following inherent risks and annoyances associated with the golf course:

- (1) maintenance operations on the golf course may begin in the early morning and extend into the evening;
- (2) during certain periods of the year, the golf course may be heavily fertilized;
- (3) maintenance of the golf course may require the use of chemicals and pesticides;
- (4) the golf course may be watered with reclaimed water; and
- (5) golf balls are not easily controlled, and accordingly may enter an Owner's airspace, strike Owner, Owner's guests, yard, walls, roof, windows, landscaping and personal property causing personal injury and property damage.

The Club and its members (in their capacity as members), and any agents, servants, employees, directors, officers, affiliates, representatives, receivers, subsidiaries, predecessors, successors and assigns of any such party ("Released Parties"), shall not be responsible for any claims, damages, losses, demands, liabilities, obligations, actions or causes of action whatsoever based on (a) any invasion of the owner's use or enjoyment of the Living Unit, (b) improper design of the golf course, (c) the level of skill of any golfer (regardless of whether such golfer has the right to use the golf course), or (d) trespass by any golfer on the Lot, that may result from property damage or personal injury from golf balls (regardless of number) hit anywhere in the Community, or adjacent roadways, or from the exercise by any golfer of the easements granted herein.

Furthermore, each Owner of a Living Unit hereby assumes the risk inherent in owning property adjacent to or nearby a golf course, including, without limitation, the risk of such personal injury and property damage from errant golf balls, and hereby indemnifies and agrees to hold the Released Parties harmless from any and all loss arising from claims by such Owner, or persons using or visiting such Owner's Lot or Living Unit for any personal injury or property damage claim.

**7.6 Conservation Easements.** There exists a perpetual conservation easement as defined in Section 704.06, Florida Statutes, Florida Statutes, for the South Florida Water Management District, and the U.S. Army Corps of Engineers permit, over the Conservation Areas which runs with the land and is binding upon the Club, its heirs, successors, and assigns and remain in full force and effect forever. The scope, nature and character of this conservation easement is as follows:

- (A) It is the purpose of this conservation easement to insure that the Conservation Areas predominately remain in their natural scenic open or wooded condition, while retaining such areas as suitable habitat for fish, plants, or wildlife. To carry out this purpose, the following rights are conveyed to SFWMD by this easement:
- (1) To enter upon the Lands at reasonable times to enforce the rights herein granted, upon prior notice to grantor, its heirs, successors or assigns in a manner that

will not unreasonably interfere with the use and quiet enjoyment of the Lands by Club, and its heirs, successors, or assigns at the time of such entry; and

(2) To enjoin any activity on or use of the Conservation Areas that is inconsistent with the purpose of this conservation easement, and to enforce the restoration of such areas or features of the Conservation Areas that may be damaged by any inconsistent activity or use, except those damages or changes caused by an act of God.

**(B) Use Restrictions.** Unless otherwise approved by SFWMD in writing, the following activities are prohibited in or on the Conservation Areas, except as provided in the reservation of rights located in Paragraph (C), or in the maintenance and monitoring plan for on-site wetland preserve areas.

(1) Construction or placing of buildings, roads, signs, billboards, or other advertising, utilities, or other structures on or above the ground.

(2) Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials.

(3) Removal or destruction of trees, shrubs, or other vegetation, excepting removal of invasive exotic species.

(4) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such a manner to affect the surface.

(5) Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition.

(6) Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation or fish and wildlife habitat preservation.

(7) Acts or uses detrimental to such retention of land and water areas.

(8) Use of recreational motor vehicles such as motorcycles, ATV's, four-wheel drive vehicles.

**(C) Reservation of Rights.** The following rights are specifically reserved to the Club, its successors or assigns:

(1) Passive recreational activities not involving construction and not contrary to the purpose of this conservation easement, may be permitted upon written approval by SFWMD.

(2) If authorized in the Environmental Resource Permit, the Club, its heirs, successors or assigns, may construct cart paths for the purposes of golf course operations.

(3) The Club reserves to itself, its successors, or assigns, all rights as owner of the property, including the right to engage in all uses of the property that are not specifically prohibited in this easement.

(D) No right of access by the general public to any portion of the lands or Conservation Areas is conveyed by this conservation easement.

(E) The Club shall bear all costs and liabilities of any kind related to the operation, upkeep, and maintenance of the Conservation Areas and does hereby indemnify and hold the SFWMD harmless therefrom.

(F) The Club shall pay any and all real property taxes and assessments levied by competent authority on the Conservation Areas, if any.

(G) Any costs incurred by the SFWMD in enforcing, traditionally or otherwise, the terms and restrictions of this conservation easement against the Club shall be borne by the Club.

(H) Any costs incurred by the Club in defending an enforcement action brought by the SFWMD shall be borne by and be recoverable against the SFWMD and its successors, as long as the SFWMD is not the prevailing party.

(I) Enforcement of the terms and provisions of the conservation easement shall be at the reasonable discretion of the SFWMD, and any forbearance on behalf of SFWMD to exercise its rights hereunder in the event of any breach hereof by the Club, its successors, or assigns shall not be deemed or construed to be a waiver of the SFWMD's rights hereunder in the event of a subsequent breach.

(J) The SFWMD will hold this conservation easement exclusively for conservation purposes. The SFWMD will not assign its rights and obligations under this conservation easement without the prior written consent of the Club, its successors, or assigns, except to other State organizations qualified to hold such interest under the applicable state and federal laws who are committed to holding this conservation easement exclusively for conservation purposes.

(K) If any provisions of this conservation easement or the application thereof to any person or circumstances is found to be invalid, the remainder of the provisions of this conservation easement and the applications of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby, as long as the general purpose of the conservation easement is preserved.

(L) All notices, consents, approvals or other communications hereunder shall be in writing and be deemed properly given if sent by registered or certified U.S. Mail, return receipt requested, addressed to the appropriate party in interest.

## 8. COMMON AREAS; USE AND MAINTENANCE.

**8.1 Common Areas.** Any real property conveyed, for the use of the Club as Club Common Areas, is not and shall not be deemed dedicated for use by the general public but is, and shall be, deemed restricted for the common use and enjoyment of members and their guests, tenants and invitees.

**8.2 Conservation Areas.** ALL CONSERVATION AREAS THAT MAY BE ESTABLISHED WITHIN THE CLUB PROPERTY ARE HEREBY DEDICATED AS CLUB COMMON AREAS. THEY SHALL BE THE PERPETUAL RESPONSIBILITY OF THE CLUB AND MAY IN NO WAY BE ALTERED FROM THEIR NATURAL STATE. ACTIVITIES PROHIBITED WITHIN THE CONSERVATION AREAS INCLUDE, BUT ARE NOT LIMITED TO, CONSTRUCTION OR PLACING OF BUILDINGS ON OR ABOVE THE GROUND; DUMPING OR PLACING SOIL OR OTHER SUBSTANCES SUCH AS TRASH; REMOVAL OR DESTRUCTION OF TREES, SHRUBS, OR OTHER VEGETATION, EXCEPT REMOVAL OF EXOTIC/NUISANCE VEGETATION; EXCAVATION, DREDGING OR REMOVAL OF SOIL MATERIAL; DIKING OR FENCING; ANY OTHER ACTIVITIES DETRIMENTAL TO DRAINAGE, FLOOD CONTROL, WATER CONSERVATION, EROSION CONTROL, OR FISH AND WILDLIFE HABITAT CONSERVATION OR PRESERVATION.

**8.3 Use of Common Areas and Facilities.** The Club shall be responsible for the maintenance and administration of all areas and facilities designated as Club Common Areas including but not limited to Lions Bay Court, Escambia Bay Court, Heritage Bay Boulevard (Main Road), Smoke House Bay Drive, Gator Bay Court, Siesta Bay Drive (stopping at Quarry property), and Biscayne Bay Lane. The CDD shall have responsibility for the surface water management system, including all thirty one (31) lakes, lake banks and lake infrastructure, littoral plantings, shelf maintenance, and any required reports to the Club and government agencies.

**8.4 Maintenance and Alteration.** The Club is responsible for the maintenance, repair, replacement, insurance, protection and control of all Common Areas in accordance with all applicable laws, and shall keep the same in good, safe, clean, attractive and sanitary condition, and in good working order at all times. There shall be no material alterations of or substantial additions to the Club Community Common Areas costing more than \$300,000, in the aggregate during any fiscal year unless first approved by a majority of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained; and there shall be no material alteration of or substantial additions to the Golf Common Areas costing more than \$300,000 in the aggregate during any fiscal year unless first approved by a majority of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained. However, if work that is reasonably necessary to meet the Club's obligations under the first sentence of this Section 8.4 also constitutes a material alteration or substantial addition, no prior membership approval is required.

**8.5 Partition, Subdivision and Encumbrance.** The Club Common Areas shall not be abandoned, partitioned, subdivided, alienated, released, transferred, hypothecated, or otherwise encumbered, without first obtaining the approval of not less than a majority of the voting interests. The foregoing shall not be construed to limit the authority of the Club through its Board of Directors to grant such easements over, across and through the Club Common Areas, as may be necessary for the effective and efficient operation of the facilities or for the general benefit of the members.



Nothing herein shall be construed to prohibit judicial partition of any Lot, Living Unit, Tract or Parcel owned in co-tenancy.

**8.6 Club's Rights and Powers.** No Club Common Areas shall be used in violation of any rule or regulation or other requirement of the Club established pursuant to the provisions of this Declaration or the Bylaws.

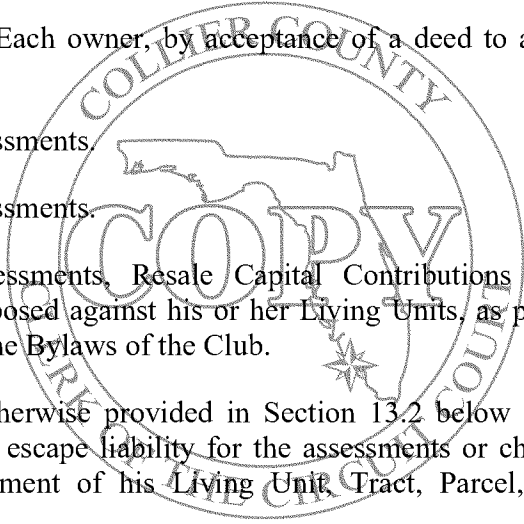
**8.7 Expansion or Modification of Common Areas.** Additions or modifications to the Club Common Area may be made if not inconsistent with the PUD and any amendments thereto.

**8.8 Security, Non-Liability of Club.** The Club shall not be liable if security services are not provided.

**9. ASSESSMENTS.**

**9.1 Creation of Lien.** Each owner, by acceptance of a deed to a Living Unit, covenants and agrees to pay to the Club:

- (A) Annual Assessments.
- (B) Special Assessments.
- (C) Service Assessments, Resale Capital Contributions and other fees or charges (including fines) imposed against his or her Living Units, as provided for elsewhere in this Declaration, and in the Bylaws of the Club.
- (D) Except as otherwise provided in Section 13.2 below as to certain mortgagees, no owner may avoid or escape liability for the assessments or charges provided for herein by non-use or abandonment of his Living Unit, Tract, Parcel, or the Common Areas, or otherwise.
- (E) Assessments shall be fixed, levied, established and collected as provided herein, and in Section 7 of the Bylaws.
- (F) The owner of each Living Unit regardless of how title was acquired, is liable for all assessments coming due while he is the owner. Multiple owners are jointly and severally liable. Except as provided in Section 13.2 below, whenever title to a Living Unit is transferred for any reason, the new owner is jointly and severally liable with the previous owner for all assessments unpaid at the time of the transfer, regardless of when incurred, without prejudice to any right the new owner may have to recover from the previous owner any amounts paid by the new owner.
- (G) No land shall be subject to assessment by the Club if it is a Neighborhood Association Common Area, or a Common Area, or it is owned by or dedicated to the County or other governmental agency, and used for a public purpose. Only Living Units shall be subject to assessment.



**9.2 Purposes of Assessments:**

- (A) To promote the recreation, health, safety, and welfare of the owners and residents of the Community;
- (B) For the improvement, maintenance, protection and operation of the Club and Community Common Areas, the Conservation Areas, the Club equipment and facilities, and the Stormwater Management System; and to establish and maintain adequate repair and replacement reserves;
- (C) To provide utility, cable television, and other systems of telecommunications services by bulk contract with third parties;
- (D) Where deemed desirable by the Board of Directors, to provide services of general benefit to the owners and residents either on a community-wide basis or otherwise, including without limitation, cable television, transportation, security or other services;
- (E) To pay the operating expenses of the Club; and
- (F) For such other purposes and uses as are authorized by the Governing Documents as amended from time to time.

**9.3 Imposition and Amount of Annual Assessments.** On the first day of each fiscal year, an annual assessment shall be assessed against each Living Unit. The amount of the annual assessment based on the annual budget shall be the same for each Living Unit subject to assessment.

**9.4 Special Assessments.** Any special assessments levied by the Club's Board of Directors shall be assessed equally against all Living Units.

**9.5 Charges.** Any charge by the Club authorized by law or by the Governing Documents to be imposed on less than all of the Living Units shall not be deemed an assessment. Payment may be enforced as provided in Section 9.6 Lien and Section 9.7 Foreclosure of Lien.

**9.6 Lien.** The Club has a lien on each Living Unit for any unpaid past due assessments and charges, together with interest, late payment penalties and reasonable attorney's fees incurred by the Club in enforcing this lien. The lien relates back to the date of recording this Declaration in the Public Records of Collier County, Florida; and is perfected by recording a Claim of Lien in the public records of the County, which Claim of Lien shall state the legal description of the property encumbered thereby, the name of the record owner, the amounts then due and the dates when due. The Claim of Lien must be signed and acknowledged by an officer or agent of the Club. The lien shall continue in effect until all sums secured by said lien have been fully paid, and the lien satisfied or discharged. The Claim of Lien shall secure all unpaid assessments and charges, interest, costs and attorneys' fees which are due and which may accrue or come due after the recording of the Claim of Lien and up to the issuance of a clerk's deed. Upon full payment, the person making payment is entitled to a satisfaction of the lien.

**9.7 Foreclosure of Lien.** Unless a different method is required by Florida law, as amended from time to time, the Club's lien may be foreclosed by the procedures and in the manner provided in Section 720.3085, Florida Statutes, as it may be amended from time to time, for the foreclosure of a

lien upon a Living Unit for unpaid assessments. The Association may also bring an action at law against any owner liable for unpaid charges or assessments. If final judgment is obtained, it shall include interest on the assessments as above provided and a reasonable attorneys' fee to be fixed by the Court, together with the costs of the action, and the prevailing party shall be entitled to recover reasonable attorneys' fees in connection with any appeal of such action.

**9.8 Priority of Lien.** Unless otherwise provided by Florida law as amended from time to time, the Club's lien for unpaid assessments and charges shall have the same priority with respect to first mortgagees holding mortgages on Living Units as the lien of a homeowners' association for unpaid assessments under Section 720.3085, Florida Statutes, as amended from time to time, has with respect to first mortgagees or other acquirers of title through the first mortgage. The Club's lien shall be superior to, and take priority over, all other mortgages regardless of when recorded. Any lease of a Living Unit shall be subordinate and inferior to any Claim of Lien of the Club, regardless of when the lease was executed. The relative priority of the Club's lien to that of a Neighborhood Association shall be determined by the order of their recording in the public records.

**9.9 Resale Capital Contribution.** The Club may levy a Resale Capital Contribution on any conveyance of a Living Unit. The amount of the Resale Capital Contribution and the manner of payment shall be as determined by resolution of the Board from time to time; provided, however, all Living Units similarly situated shall be assessed at a uniform rate. The due date shall be the date of the closing of the conveyance. Payment of the Resale Capital Contribution shall be the legal obligation of the new Owner. For purposes of this Section, the term "conveyance" shall mean the transfer of record legal title to a Living Unit by deed or other authorized means of conveyance, with or without valuable consideration, and shall also refer to a transfer of possession and beneficial ownership by means of an agreement for deed. It does not refer to a transfer of title resulting from foreclosure of a lien, or the death of the transferee, nor to a transfer of title to a Director or the transferor's spouse without changing occupancy, solely for estate planning or tax reasons. A Resale Capital Contribution shall be considered an assessment and can be collected as such in accordance with the provisions under Article 9.

**9.10 Ownership.** Assessments, Resale Capital Contributions, and charges collected by or on behalf of the Club become Association property; no owner has the right to claim, assign or transfer any interest therein except as an appurtenance to his Living Unit. No owner has the right to withdraw or receive distribution of his share of the common surplus (including reserves), except as otherwise provided by law.

**9.11 Leased Living Units.** If a Living Unit is occupied by a tenant and the Living Unit is delinquent in paying any Assessment or monetary obligation to the Club, the Club may, to the extent authorized by law, demand that the tenant pay to the Club the subsequent rental payments and continue to make such payments until all of the Assessments and monetary obligations related to the Living Unit have been paid in full to the Club and the Club releases the tenant or until the tenant discontinues tenancy in the Living Unit.

**9.12 Fannie Mae.** Notwithstanding anything in this Declaration to the contrary and to the extent permitted by applicable law, with respect solely to Fannie Mae approved financing of a Living Unit, any Institutional Mortgagee who obtains title to a Living Unit pursuant to the remedies in the mortgage or through foreclosure will not be liable for more than six (6) months of the Living Unit's

unpaid assessments accrued before acquisition of the title to the Living Unit by the Institutional Mortgagee.

**10. COVENANT AND RULE ENFORCEMENT: DISPUTE RESOLUTION.** The Club has the power to enforce all covenants, conditions, restrictions, rules and agreements applicable to any real property within Heritage Bay Golf & Country Club, and is further empowered to promulgate and enforce administrative rules and regulations governing the use of the Common Areas.

**10.1 Owner and Member Compliance.** The protective covenants, conditions, restrictions and other provisions of the Governing Documents and the rules promulgated by the Club, shall apply to all classes of members as described in Section 4.1 as well as to any other person occupying any Living Unit. Failure of an owner to notify any person of the existence of the rules, or the covenants, conditions, restrictions, and other provisions of the Governing Documents shall not in any way act to limit or divest the Club of the power to enforce these provisions. Each owner shall be responsible for any and all violations by his tenants, licensees, invitees or guests, and by the guests, licensees and invitees of his tenants, at any time.

**10.2 Litigation.** Subject to Section 3.6 above, each member and the member's tenants, guests, and invitees, and the Club, are governed by and must comply with Chapter 720, Florida Statutes, the Governing Documents and rules of the Club. Enforcement actions for damage, or for injunctive relief, or both, on account of any alleged violation of the Governing Documents and Club Rules may be brought by any owner or the Club against:

- (A) The Club;
- (B) A member;
- (C) Any occupant of a Living Unit;
- (D) Any Director or officer of the Association who willfully and knowingly fails to comply with these provisions;
- (E) Any tenants, guests, or invitees occupying a parcel or using the common areas; and
- (F) Any neighborhood Association which fails to make a prompt and reasonable effort to enforce any restrictive covenants or affirmative obligations under provisions of this Declaration or the Neighborhood Covenants, where such failure has or threatens to have a material adverse impact on the appearance of the community, or the operation of the Club. The prevailing party in any such litigation is entitled to recover reasonable attorney's fees and costs. This Section is not intended to deprive any person of any other available right or remedy. The enforcement of covenants, conditions, restrictions and agreements applicable to the various subdivisions and developments within the Community is primarily the function and duty of the respective Neighborhood Associations. It is the intent of this provision that the Club exercise its covenant enforcement powers with respect to Neighborhood Covenants only after the Neighborhood Association primarily responsible for enforcement has notice of the violation and has, after a reasonable time, been unable or unwilling to resolve the problem in a satisfactory manner.

**10.3 Damages and Attorney's Fees.** Damages shall not be conclusively deemed adequate relief for any breach or violation of the Governing Documents or the rules. Any person or entity entitled to enforce any provision thereof shall be entitled to relief by way of injunction, as well as any other available relief either at law or in equity. The prevailing party in a proceeding to enforce any provision of the Governing Documents or rules, or to enjoin violation or breach of any provision hereof, or recover damages on account of such breach, against any person shall be entitled to recover reasonable attorney's fees and court costs (including those resulting from appellate proceedings).

**10.4 Fines.**

(A) In addition to the means of enforcement provided elsewhere herein, the Board of Directors shall have the right to levy reasonable fines against a unit, a unit owner, or his guests, relatives or lessees in the event of a violation of the provisions of the Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Club regarding the use of units, common elements, or Club property. Each such violator and the unit owner shall be given written notice of the alleged violation and the opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, brother or sister of an officer, director, or employee. If the Committee, by majority vote, does not approve a proposed fine or suspension (as provided in Section 10.5 below), it may not be imposed. The role of the Committee is limited to determining whether to confirm or reject the fine or suspension levied by the Board. If the Board imposes a fine or suspension, the Association must provide written notice of such fine or suspension by mail or hand delivery to the owners and, if appropriate, to any tenant, guest or invitee of the parcel owner with at least fourteen (14) days' notice. Said notice shall include a statement of the date, time and place of the hearing; a statement of the provisions of the Declaration, Articles, Bylaws or Rules and Regulations which have been allegedly violated; and a short and plain statement of the matters asserted by the Club. The party against whom the fine may be levied shall have an opportunity to respond, to present evidence, and provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge, and respond to any material considered by the Club. The amount of such fine shall not exceed One Hundred Dollars (\$100.00) per occurrence, or the maximum permissible by law, and each reoccurrence of the alleged violation for each day during which violation continues shall be deemed a separate offense and may result in additional fines, without the requirement of a separate hearing, such not to exceed the maximum permissible by law. So long as the violation has been abated or otherwise ceased, the maximum account the Club may fine shall not exceed \$2,500.00 per violation. The payment of fines shall be the ultimate responsibility of the unit owner, even when the violations for which fines have levied arise out of the conduct of family members, guests or tenants. Any action to collect a duly levied fine shall entitle the prevailing party to an award of all costs and reasonable attorney's fees.

(B) Collection of fines. A fine shall be treated as a special charge due to the Club ten (10) days after written notice from the Club to the owner of the imposition of the fine. If not paid by the due date, the fine shall accrue interest at the highest rate allowed by law, and may itself be the subject of a late payment fee.

(C) Application. All monies received from fines shall become part of the common surplus.

(D) Nonexclusive remedy. Fines shall not be construed to be an exclusive remedy, and shall exist in addition to all other rights and remedies to which the Club may be otherwise legally entitled; however, any fine paid by the offending owner shall be deducted from or offset against any damages that the Club may otherwise be entitled to recover at law from such owner.

**10.5 Suspension of Use Rights.** To the extent lawful, the Board of Directors may suspend the right of any unit owner, or his guests, tenants, or family members, to use Common Areas during any period of time the owner shall have failed to pay any fine levied, or for a reasonable time as punishment for one or more infractions of the Club Declaration, Bylaws and Rules and Regulations by the owner, his family, guests or tenants. No such suspension shall affect the unit owner's right of access to his unit.

(A) A suspension may not be imposed without notice of at least fourteen (14) days to the person sought to be suspended and an opportunity for a hearing before a committee of at least three (3) members appointed by the Board who are not officers, Directors, or employees of the Association, or the spouse, parent, child, brother, or sister of an officer, Director, or employee. If the committee, by majority vote, which may be by secret ballot, does not approve a proposed suspension, it may not be imposed.

(B) The requirements of the previous paragraph do not apply to the imposition of suspensions or fines upon any member because of the failure of the member to pay assessments or other charges when due if such action is authorized by the Governing Documents.

(C) Suspension of common area use rights shall not impair the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

**10.6 Stormwater Management System.** The beneficiaries of the Stormwater Management System shall have the right to enforce the provisions of the Governing Documents that the drainage system, easements and rights-of-way will be continuously maintained.

## **11. NEIGHBORHOOD ASSOCIATIONS.**

**11.1 Entry Rights.** Each Neighborhood Association and each owner shall permit the Club, or any authorized agent or employee of the Club, to enter upon a Neighborhood Common Area or the owner's Living Unit at reasonable times, to carry out the provisions of this Declaration, and the entry shall not constitute a trespass. This provision shall not be construed as authorizing entry by the Club into the interior of any Living Unit except in an emergency and as provided for in Section 12.7.

**11.2 Maintenance of Neighborhood Common Areas.** The Club may contract with any Neighborhood Association to provide for the maintenance and management of its Neighborhood Common Areas.

**11.3 Neighborhood Covenants.** The documents establishing or governing a Neighborhood Association shall not be inconsistent with this Declaration or its recorded exhibits, except they may establish restrictions on subjects related to the use and occupancy of the property within the Neighborhood, such as pets, parking, architectural controls, leasing and guest occupancy, that are more restrictive than those set forth in the Governing Documents.

**11.4 Neighborhood Association Voting.** The Club Bylaws shall provide a procedure by which its members who are entitled to cast votes as members of the Club may cast their votes and have their votes cast by and through their Voting Representatives, as applicable, on Club matters. Except as otherwise provided in the Bylaws, the Club shall poll its members “at large” and collect and tabulate its members’ votes on all matters as to which Club members are entitled to vote at Club membership meetings. In the event of a conflict between the Club Governing Documents and Neighborhood Documents as it pertains to voting on Club matters, the terms and conditions of the Club Governing Documents shall prevail. Voting Representatives shall formally cast votes on behalf of, and as decided and directed by, the Club members from their respective Neighborhood Associations at Club membership meetings, as provided more fully in the Club Bylaws.

**11.5 Voting Groups.** The number of Directors to be elected shall be nine (9). Each Voting Group shall be entitled to elect two (2) directors. The ninth Director will be elected “at large” by all members of the Club. At each annual election, each Voting Group shall elect one Director in accordance with Section 4.2 of the Bylaws. If there is no one willing and eligible to serve on the Board of Directors from one or more of the Voting Groups as established below, that seat shall be filled in accordance with the provisions of Section 4.5 of the Master Association Bylaws. If the remaining Directors are unable to fill the position in accordance with the provisions of Section 4.5 of the Bylaws, that position shall remain vacant until the next annual election, unless the Board is sooner able to fill the vacancy by appointment for the remaining term as provided in Section 4.5 of the Bylaws.

**(A) Voting Group 1** – shall consist of the following Neighborhood(s):

Terrace I at Heritage Bay	(60 Living Units)
Terrace II at Heritage Bay	(60 Living Units)
Terrace III at Heritage Bay	(60 Living Units)
Terrace IV at Heritage Bay	(30 Living Units)
Terrace V at Heritage Bay	(30 Living Units)
Terrace VI at Heritage Bay	(60 Living Units)
Terrace VII at Heritage Bay	(60 Living Units)
Terrace VIII at Heritage Bay	(60 Living Units)
Terrace IX at Heritage Bay	(30 Living Units)
<hr/>	
Total	(450 Living Units)

**(B) Voting Group 2** – shall consist of the following Neighborhood(s):

Veranda I at Heritage Bay	(60 Living Units)
Veranda II at Heritage Bay	(48 Living Units)
Veranda III at Heritage Bay	(28 Living Units)
Veranda IV at Heritage Bay	(48 Living Units)

Veranda V at Heritage Bay	(48 Living Units)
Veranda VI at Heritage Bay	(24 Living Units)
Veranda VII at Heritage Bay	(60 Living Units)
Veranda VIII at Heritage Bay	(48 Living Units)
<hr/> Total	<hr/> (364 Living Units)

(C) **Voting Group 3** – shall consist of the following Neighborhood(s):

Coach Homes I at Heritage Bay	(36 Living Units)
Coach Homes II at Heritage Bay	(88 Living Units)
Coach Homes III at Heritage Bay	(60 Living Units)
<hr/> Total	<hr/> (184 Living Units)

(D) **Voting Group 4** – shall consist of the following Neighborhood(s):

Heritage Bay Single-Family Homes I	(252 Living Units)
<hr/> Total	<hr/> (252 Living Units)

**12. INSURANCE: RECONSTRUCTION AFTER CASUALTY.**

**12.1 Duty to Insure and to Reconstruct or Clean Up.** Each Owner or Neighborhood Association shall at all times maintain adequate property insurance on the Living Units and structures containing Living Units, and all other insurable improvements, in amounts equal to the replacement cost thereof. If any Living Unit or other improvements located on any Lot, Neighborhood Common Area, Tract or Parcel are destroyed or damaged as a result of fire, windstorm, flood, tornado, hurricane or other casualty, the owner or Neighborhood Association shall:

(A) Cause repair or replacement to be commenced within six (6) months after the date such damage or destruction occurred, and complete the repair or replacement within six (6) months thereafter. All such repairs or replacements must be approved in writing by the ARCHITECTURAL REVIEW COMMITTEE. Unless changes are approved by the ARCHITECTURAL REVIEW COMMITTEE, the owner or Neighborhood Association must restore the damaged property to substantially the same configuration as existed before the casualty, and structurally and architecturally compatible with any adjoining improvements which share a party wall; or

(B) Promptly cause all debris, damaged improvements, and other unsightly materials to be removed from the site.

**12.2 Failure to Comply.** If any owner or Neighborhood Association fails to comply with Section 12.1 above within the time periods provided, the Club shall be deemed to have been granted the right by the owner or Neighborhood Association as his or its attorney-in-fact, to either commence and complete the repairs sufficient to substantially restore the improvements to their original condition, according to the plans and specifications of the original improvements; or to remove the damaged improvements completely. If the Club exercises the rights afforded to it by this Section, the owner or



Neighborhood Association shall be deemed to have assigned to the Club any right he or it may have to insurance proceeds that may be available because of the damage or destruction. The Club shall have the right to recover from the owner or Neighborhood Association any costs not paid by insurance, and shall have a lien on the Living Unit to secure payment.

**12.3 Flood Insurance.** The Club may, in the discretion of the Board, maintain flood insurance to cover buildings and any other property in designated hazard areas, if any, up to the full insurable value or maximum coverage available.

**12.4 Property Insurance.** The Club shall maintain replacement cost property insurance coverage on all structures, improvements, and fixtures which are part of the Common Areas.

**12.5 Liability Insurance.** The Club shall maintain adequate public liability insurance coverage for all Common Areas.

**12.6 Bonding.** The Club shall maintain adequate fidelity bond coverage for all individuals having control of or access to Association funds.

**12.7 Club's Right of Entry.** For the purpose of performing the duties authorized by this Section 12, the Club, through its duly authorized agents and employees, shall have the right to enter upon any Living Unit or Lot at reasonable hours and perform such duties.

### **13. RIGHTS OF MORTGAGEES.**

**13.1 Notice of Casualty or Condemnation.** In the event of condemnation, eminent domain proceedings, or very substantial damage to, or destruction of any significant portion of the Common Areas, the record holder of any first mortgage on the Common Areas who has requested such notice in writing, shall be entitled to written notice.

**13.2 Mortgage Foreclosure.** Except as otherwise provided by Florida law as amended from time to time, if an Institutional Mortgagee acquires title to a Living Unit, as a result of foreclosure of the mortgage, or as the result of a deed given in lieu of foreclosure in which the Club has been named as a defendant in the initial complaint, shall be liable for assessments levied against such Living Unit, unless the mortgagee is entitled to limited liability for delinquent assessments as provided in Chapter 720, Fla. Stat., which currently requires the lender to pay the Club the lesser of one percent (1%) of the original mortgage indebtedness, or the sum of the regular and special assessments that accrued or became due during the twelve (12) months immediately preceding acquisition of title by the lender, and as Chapter 720, Fla. Stat., may be amended by time to time. The foregoing sentence pertaining to entitlement to limited liability shall not be construed to negate the authority of a court to order a mortgagee to pay a surcharge pursuant to 11 USC Section 506(c), or grant other relief that may be found to be applicable under federal or state law. Any unpaid assessment or charges for which such acquirer is exempt from liability becomes an expense collectible from all Owners, including such acquirer and his successors and assigns. No Owner or acquirer of title to a Living Unit by foreclosure (or by a deed in lieu of foreclosure) may, during the period of his ownership, be excused from the payment of any assessments or charges coming due during the period of such ownership.

**13.3 Right to Inspect Documents and Books.** The Club shall make available to Institutional Mortgagees requesting same the current Governing Documents and Rules, Regulations and Policies of the Club and financial statements of the Association. "Available" shall mean ready for inspection, upon written request, during normal business hours, or under other reasonable circumstances. Photocopies shall be at the expense of the mortgagee requesting same.

**13.4 Financial Statement.** Any Institutional Mortgagee is entitled, upon written request, to a copy of the financial statements of the Club for the immediately preceding fiscal year.

**13.5 Lender's Notices.** Upon written request to the Club, any Institutional Mortgagee shall be entitled to timely written notice of:

(A) Any delinquency of more than sixty (60) days in the payment of assessments or charges owed by the owner of any Living Unit, on which it holds a mortgage.

(B) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Club. An increase in coverage, or a change of insurer does not require notice under this Paragraph.

(C) Any proposed action that requires the consent of a specified percentage of mortgage holders.

#### **14. DURATION OF COVENANTS; AMENDMENTS.**

**14.1 Duration of Covenants.** The covenants, conditions, easements and restrictions in this Declaration shall run with and bind the property within the Community, and shall inure to the benefit of and be enforceable by the County, the Club, and any owner, their respective legal representatives, heirs, successors, and assigns, for an initial period to expire on the ninety-ninth (99th) anniversary of the date of recording this Declaration in the Public Records of Collier County, Florida. Upon the expiration of said initial period, this Declaration shall be automatically renewed and extended for an unlimited number of successive ten (10) year periods, this Declaration as it may be amended being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period, until terminated as provided below.

**14.2 Termination.** This Declaration may be terminated at any time after the initial period if not less than eighty percent (80%) of the voting interests of all classes of the members of the Club vote in favor of terminating this Declaration. Written notice of any meeting at which a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given at least forty-five (45) days in advance of said meeting. If the members vote to terminate this Declaration, the President and Secretary of the Club shall execute a certificate which shall set forth the resolution of termination so adopted, the date of the meeting of the Club at which the resolution was adopted, the date that notice of the meeting of the Club at which the resolution was adopted, the date that notice of the meeting was given, the total number of votes cast in favor of the resolution, and the total number of votes cast against the resolution. The certificate shall be recorded in the public records of the County, and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration. The termination shall be effective on the date the Certificate is recorded in the public records.

**14.3 Amendments.** This Declaration may be amended at any time. Except as otherwise specifically provided, amendments to this Declaration may be proposed by the Board of Directors or by written petition of at least one-fourth (1/4th) of the voting interests.

**14.4 Procedure.** Upon any amendment or amendments to this Declaration being proposed as provided above, the proposed amendment or amendments shall be submitted to a vote of the members not later than the next annual meeting for which proper notice can be given.

**14.5 Vote Required.** Except as otherwise provided by law, or by specific provision of this Declaration, a proposed amendment to this Declaration shall be adopted if it is approved at an annual or special meeting called for the purpose by at least two-thirds (2/3rds) of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained.

**14.6 Certificate: Recording.** A copy of each adopted amendment shall be attached to a certificate that the amendment was duly adopted as an amendment to the Declaration, which certificate shall be executed by officers of the Association with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the public records of the County. The certificate must set forth the location in the public records of the County where this Declaration was originally recorded.

**14.7 Proviso.** Regardless of any other provision in this Declaration, no amendment of the governing documents by any person, and no termination or amendment of this Declaration, can be effective to change the Club's responsibilities for the Stormwater Management System, the Conservation Areas, unless the amendment has been consented to in writing by the SFWMD. Any proposed amendment which would affect the Stormwater Management System, or the Conservation Areas, must be submitted to the SFWMD for a determination of whether the amendment necessitates a modification of the surface water management permit.

**14.8 Exceptions.** Wherever in this Declaration the consent, approval, or affirmative vote of two-thirds (2/3rds) or more of the voting interests of the members is required to authorize or take a particular action, the language requiring the particular number of consents, approvals, or votes may not be amended except by the same vote required to authorize or take the action.

**14.9 Limitations.** No amendment to any of the Governing Documents shall be effective to change any member's voting rights as set forth in the Governing Documents, unless all members affected first consent in writing to said amendment.

## **15. GENERAL AND PROCEDURAL PROVISIONS.**

**15.1 Other Documents.** The Club, and the Neighborhood Associations shall have such rights, powers, duties, and privileges as are set forth in the Governing Documents and Neighborhood Covenants; this Declaration and its provisions shall prevail in all events of conflict.

**15.2 Severability.** If any covenant, condition, restriction or other provision of this Declaration is held to be invalid in whole or in part by any court of competent jurisdiction, the holding shall in no way affect the validity of the remaining provisions of this Declaration, all of which shall remain in full force and effect.

**15.3 Merger or Consolidation of Associations.** Upon a merger or consolidation of the Club with another corporation as provided by law, or upon creation of a CDD, the Club's rights, obligations and property may, by operation of law, be transferred to another surviving or consolidated association or CDD, alternatively, they remain the rights, obligations and property of the Club as the surviving corporation. The surviving or consolidated corporation or CDD may administer this Declaration within the existing property together with the covenants and restrictions established upon any other property, as one common scheme.

**15.4 Dissolution.** If the Club is dissolved other than by a merger or consolidation as provided for above, each Living Unit, shall continue to be subject to the assessments provided for in Section 9, and each owner shall continue to be personally obligated to the successor or assigns of the Club for such assessment to the extent that such assessments are required to enable any such successors or assigns acquiring any real property previously owned by the Club to properly maintain, operate and preserve it.

**15.5 Gender: Number.** Wherever in this Declaration the context so requires, the singular number shall include the plural, and the converse; and the use of any gender shall be deemed to include all genders.

**15.6 Notices.**

(A) To the Club. Notices to the Club shall be in writing and delivered or mailed to the Club at its principal place of business as shown by the records of the Secretary of the State of Florida, or at any other location designated by the Club.

(B) To Owners. Notices to any owner as may be required herein shall be in writing and shall be delivered or mailed to the owner at his last known address, or at the address shown on the deed recorded in the public records of the County.

**15.7 Construction.** The provisions of this Declaration shall be liberally interpreted and construed to provide maximum flexibility consistent with the general development plan and the purposes set forth herein, including the premises.

**15.8 Captions, Headings and Titles.** Captions, headings, capitalization of certain words, and titles inserted throughout the Governing Documents are for convenience only, and in no way shall such captions, headings or titles define, limit, or in any way affect the subject matter, content or interpretation of the terms and provisions of the Governing Documents.

**15.9 Interpretation.** The Board of Directors of the Club shall be responsible for interpreting the provisions of the Governing Documents. Their interpretation shall be binding upon all parties unless wholly unreasonable. A written opinion rendered by Club legal counsel that an interpretation adopted by the Board is not wholly unreasonable shall conclusively establish the validity of such interpretation.

**15.10 Applicable Statutes.** The validity, application, and construction of this Declaration and its exhibits shall be governed by the Laws of Florida, as they exist on the date of recording this Declaration.



**EXHIBIT "A"**

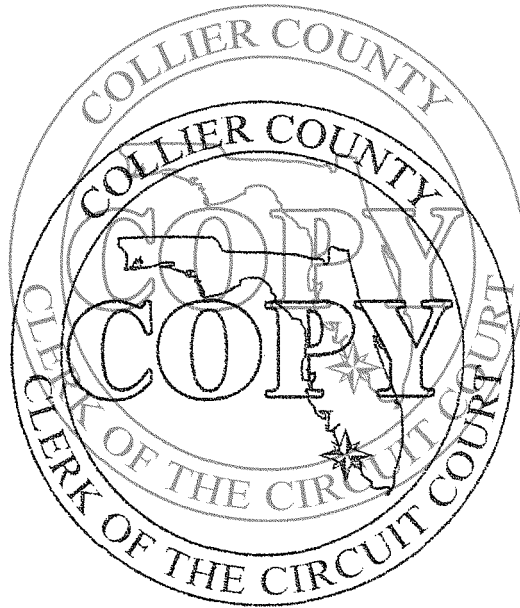
**LEGAL DESCRIPTION**

All of HERITAGE BAY, a subdivision of Plat Book 43, Pages 15 though 45, as recorded in the Public Records of Collier County, Florida.



**EXHIBIT "B"**

Those lands which are: (a) specifically identified as Club Common Areas or Common Areas, if any, on the subdivision Plat for Heritage Bay Plat Book 43, Pages 15-45, Public Records of Collier County, Florida; and (b) formally conveyed by Deed to the Club.



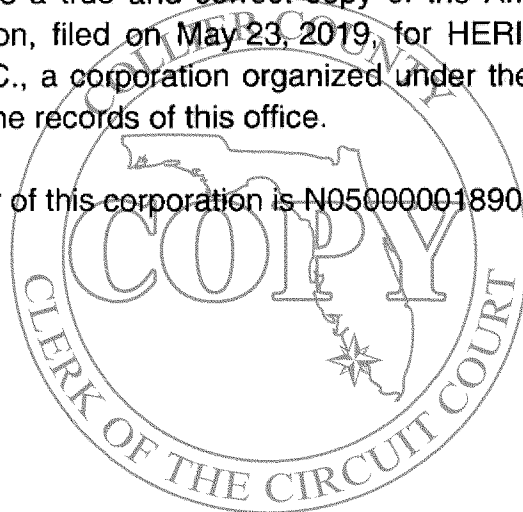
# State of Florida



Department of State

I certify the attached is a true and correct copy of the Amended and Restated Articles of Incorporation, filed on May 23, 2019, for HERITAGE BAY GOLF & COUNTRY CLUB, INC., a corporation organized under the laws of the State of Florida, as shown by the records of this office.

The document number of this corporation is N05000001890.



Given under my hand and the Great Seal of the State of Florida at Tallahassee, the Capital, this the Fifth day of June, 2019



*Laurel M. Lee*  
Laurel M. Lee

Secretary of State



Prepared by:

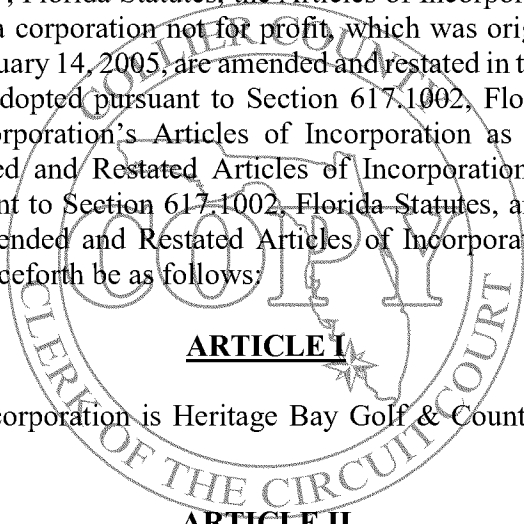
Christopher N. Davies, Esquire  
Cohen & Grigsby, P.C.  
Mercato - Suite 6200  
9110 Strada Place  
Naples, FL 34108

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**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE ARTICLES OF INCORPORATION. FOR PRESENT TEXT, SEE EXISTING ARTICLES OF INCORPORATION.**

**AMENDED AND RESTATED  
ARTICLES OF INCORPORATION  
OF  
HERITAGE BAY GOLF & COUNTRY CLUB, INC.**

Pursuant to Section 617.1007, Florida Statutes, the Articles of Incorporation of Heritage Bay Golf & Country Club, Inc., a Florida corporation not for profit, which was originally incorporated and filed under the same name on February 14, 2005, are amended and restated in their entirety. All amendments included herein have been adopted pursuant to Section 617.1002, Florida Statutes, and there is no discrepancy between the corporation's Articles of Incorporation as heretofore amended and the provisions of these Amended and Restated Articles of Incorporation other than the inclusion of amendments adopted pursuant to Section 617.1002, Florida Statutes, and the omission of matters of historical interest. The Amended and Restated Articles of Incorporation of Heritage Bay Golf & Country Club, Inc., shall henceforth be as follows:



**ARTICLE I**

**NAME:** The name of the corporation is Heritage Bay Golf & Country Club, Inc. (hereinafter the "Club").

**ARTICLE II**

**PRINCIPAL OFFICE:** The principal office of the Club is 10154 Heritage Bay Boulevard, Naples, Florida 34120.

**ARTICLE III**

**PURPOSE AND POWERS:** The purpose for which the Club is organized is to provide a corporate entity to act as "association" as defined in Chapter 720, Florida Statutes, for the operation of a residential community and certain recreational and other common facilities serving Heritage Bay Golf & Country Club, located in Collier County, Florida.

The Club is organized and shall exist upon a non-stock basis as a Florida corporation not for profit, and no portion of any earnings of the Club shall be distributed or inure to the private benefit of any Member, Director or officer of the Club. For the accomplishment of its purposes, the Club shall have all of the common law and statutory powers and duties of a corporation not for profit under Florida law, except as limited or modified by these Articles, the Declaration of Covenants, Conditions and Restrictions to which these Articles are attached as a recorded exhibit, or the Bylaws of the Club, and

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it shall have all other powers and duties reasonably necessary to operate the Community, and effectuate the purpose for which it is organized pursuant to said Declaration of Covenants, Conditions and Restrictions as it may hereafter be amended, including but not limited to the following:

- (A) To own land, and to operate, maintain, and manage those lands owned by the Club and such other lands which the Club is responsible to maintain.
- (B) To operate, maintain, manage and keep in good repair, improvements and amenities upon lands owned by the Club and upon lands which the Club is responsible to maintain, including, without limitation, lakes, golf course, entrance ways and certain landscape areas for the use of the Club's Members and their respective unit owners.
- (C) To levy and collect assessments against Members of the Club to defray the costs, expenses and losses of the Club, and to use the proceeds of assessments in the exercise of its powers and duties.
- (D) To provide or contract in bulk for the provision of private utility, telecommunication, and other services (if any) to the Members and their residents.
- (E) To purchase insurance for the protection of the Club and its Members.
- (F) To make, establish, amend and enforce reasonable rules, regulations and policies governing the use of the Club Common Areas and the operation of the Club.
- (G) To sue and be sued, and to enforce the covenants and restrictions in the Declaration of Covenants, these Articles, and the Bylaws of the Club.
- (H) To employ accountants, attorneys, architects, or other professional personnel, and to contract for services necessary to perform the services required for proper operation and maintenance of the Community.
- (I) To acquire, own and convey real property, and to enter into agreements, or acquire leaseholds, easements, Memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. It has this power regardless of whether the lands or facilities are contiguous to the lands of the Club, if they are intended to provide enjoyment, recreation, or other use or benefit to the Members.
- (J) To borrow or raise money for improving the Common Areas; to draw, make, accept, endorse, execute and issue promissory notes, drafts, bills of exchange, warrants, bonds, debentures and other negotiable or non-negotiable instruments and evidences of indebtedness; and to secure the payment of any thereof, and of the interest therein, by mortgage, pledge, conveyance or assignment in trust, of the whole or any part of the rights or property of the Club. Any amount equal to or greater than two percent (2%) of the Club's annual operating budget excluding reserves shall first require approval of a majority of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained.

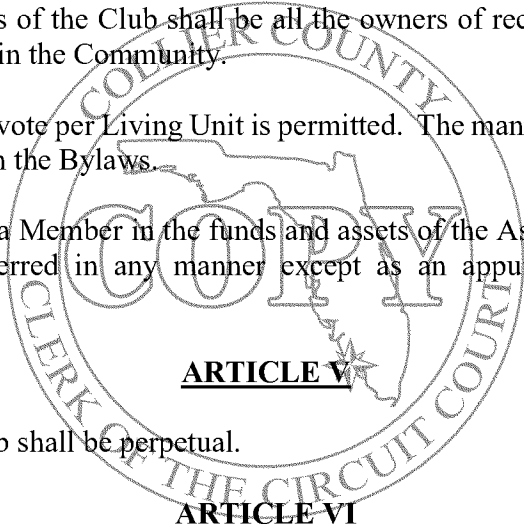
(K) To be responsible in perpetuity for maintenance of all preserved, restored, or created wetlands areas and upland buffer zones, if any, located on the Club Common Areas; and to take action against Lot, Living Units or Neighborhood Associations, if necessary, to enforce the conditions of any permit issued by South Florida Water Management District ("SFWMD") for the Club Common Areas.

All funds and the title to all property acquired by the Club shall be held for the benefit of the Members in accordance with the provisions of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Bay, these Amended and Restated Articles of Incorporation and the Amended and Restated Bylaws.

**ARTICLE IV**

**MEMBERS:**

- (A) The Members of the Club shall be all the owners of record legal title to one or more Lots or Living Units in the Community.
- (B) Only one (1) vote per Living Unit is permitted. The manner of exercising voting rights shall be as set forth in the Bylaws.
- (C) The share of a Member in the funds and assets of the Association cannot be assigned, withdrawn or transferred in any manner except as an appurtenance to the property the Association operates.



**ARTICLE V**

**TERM:** The term of the Club shall be perpetual.

**ARTICLE VI**

**BYLAWS:** The Bylaws of the Club may be altered, amended or rescinded in the manner provided therein.

**ARTICLE VII**

**AMENDMENTS:** Amendments to these Articles shall be proposed and adopted in the following manner:

- (A) Proposal. Amendments to these Articles may be proposed by a majority of the Directors or by written petition of at least ten percent (10%) of the Members, and shall be submitted to a vote of the Members not later than the next annual meeting for which proper notice can be given.
- (B) Vote Required. Notice of any proposed amendment must first be given to each Member of the Club, and that notice must contain the text of the proposed amendment. Except as otherwise required by Florida law, a proposed amendment to these Articles of Incorporation

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shall be adopted if it is approved by concurrence of at least two-thirds (2/3) of those Members who are eligible to vote and who are present and voting, in person or by proxy, at any duly called annual or special meeting.

(C) Effective Date. An amendment shall become effective upon filing with the Secretary of State and recording a copy in the Public Records of the County with the same formalities as required in the Bylaws for an amendment to the Bylaws.

### ARTICLE VIII

#### DIRECTORS AND OFFICERS:

(A) The affairs of the Club will be administered by a Board of Directors consisting of the number of Directors determined by the Bylaws, but not less than three (3) Directors, and in the absence of such determination shall consist of three (3) Directors.

(B) Directors of the Club shall be elected by the Members in the manner described in the Bylaws. Directors may be removed and vacancies on the Board of Directors shall be filled in the manner provided in the Bylaws.

(C) The business of the Club shall be conducted by the officers designated in the Bylaws. The officers shall be elected by the Board of Directors at its first meeting following the annual meeting of the Members of the Club and shall serve at the pleasure of the Board.

### ARTICLE IX

#### INDEMNIFICATION:

To the fullest extent permitted by Florida law, the Club shall indemnify and hold harmless every Director, officer, volunteer, and/or committee member of the Club against all expenses and liabilities, including attorneys' fees, actually and reasonably incurred by or imposed on him or her in connection with any legal proceeding (or settlement or appeal of such proceeding) to which he or she may be a party because of his or her being or having been a Director, officer, volunteer and/or committee member of the Club. The foregoing right of indemnification shall not be available if a judgment or other final adjudication establishes that his actions or omissions to act were material to the cause adjudicated and involved:

(A) Willful misconduct or a conscious disregard for the best interests of the Club, in a proceeding by or in the right of the Club to procure a judgment in its favor.

(B) A violation of criminal law, unless the Director, officer, volunteer and/or committee member had no reasonable cause to believe his action was unlawful or had reasonable cause to believe his action was lawful.

(C) A transaction from which the Director, officer, volunteer and/or committee member derived an improper personal benefit.

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(D) Wrongful conduct by Directors, officers, volunteers and/or committee members in a proceeding brought on behalf of the Club.

In the event of an out-of-court settlement of litigation, the right to indemnification shall not apply unless a majority of the disinterested Directors approves the settlement and indemnification as being in the best interest of the Club. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which a Director, officer, volunteer and/or committee member may be entitled.



CERTIFICATE

The undersigned, being the duly elected and acting President and Secretary of Heritage Bay Golf & Country Club, Inc., hereby certify that the foregoing were duly proposed by a majority of the Directors on April 18, 2019, at a duly called meeting of the Board of Directors and approved by a majority of the voting Members voting at the Annual Meeting held on April 25, 2019, after due notice, in accordance with the requirements of the Articles of Incorporation for their amendment, and that said vote is sufficient for their amendment. The foregoing both amend and restate the Articles of Incorporation in their entirety.

Executed this 15th day of May, 2019.

HERITAGE BAY GOLF & COUNTRY CLUB, INC.

By: *Michel Anderson*  
Michel Anderson, President

(SEAL)

Attest:

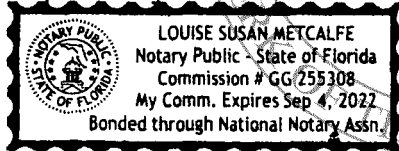
*Mary Jo Diegel*  
Mary Jo Diegel, Secretary

STATE OF FLORIDA )

) ss:

COUNTY OF COLLIER )

The foregoing instrument was acknowledged before me this 15th day of May, 2019, by Michel Anderson, President of Heritage Bay Golf & Country Club, Inc., a Florida corporation not for profit, on behalf of the corporation. He is personally known to me or has produced a driver's license as identification and did not take an oath.



*Louise S. Metcalfe*  
Notary Public  
Louise S. Metcalfe  
My Commission Expires:

(SEAL)

STATE OF MICHIGAN )

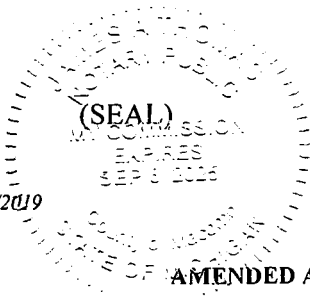
) ss:

COUNTY OF MACOMB )

The foregoing instrument was acknowledged before me this 10 day of May, 2019, by Mary Jo Diegel, Secretary of Heritage Bay Golf & Country Club, Inc., a Florida corporation not for profit, on behalf of the corporation. She is personally known to me or has produced State ID as identification and did not take an oath.

*James A. Thomas*  
Notary Public

Printed Name: James A. Thomas  
Commission Expires: 09-06-2025



2964799.v1  
Updated 3/7/2019

Prepared by:

Christopher N. Davies, Esquire  
Cohen & Grigsby, P.C.  
Mercato - Suite 6200  
9110 Strada Place  
Naples, FL 34108

**NOTE: SUBSTANTIAL AMENDMENT OF ENTIRE BYLAWS. FOR PRESENT TEXT SEE EXISTING BYLAWS.**

**AMENDED AND RESTATED BYLAWS  
OF  
HERITAGE BAY GOLF & COUNTRY CLUB, INC.**

**1. GENERAL.** These are the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., (hereinafter the "Club"), a Florida corporation not for profit organized for the purposes set forth in the Articles of Incorporation, as a residential community with golf and country club facilities.

**1.1 Principal Office.** The principal office of this corporation shall be located at 10154 Heritage Bay Boulevard, Naples, Florida 34120, and subsequently at such other place as may be established by resolution of the Board of Directors.

**1.2 Definitions.** All terms defined in the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Bay Golf & Country Club (the "Club Declaration" or "Declaration of Covenants") to which these Bylaws are attached as an exhibit shall be used with the same meanings as defined therein.

**1.3 Seal.** The seal of the Club shall be inscribed with the name of the Club, the year of its organization, and the words "Florida" and "corporation not for profit." The seal may be used by causing it, or a facsimile of it, to be impressed, affixed, reproduced or otherwise placed upon any document or writing of the corporation where a seal may be required.

**2. MEMBERSHIP AND VOTING RIGHTS.** The classes of membership shall be as more fully set forth in Section 4.1 of the Declaration of Covenants.

**2.1 Voting Rights; Voting Interests.** Each Living Unit shall have one (1) indivisible vote in all matters upon which the members are entitled to vote. The total number of voting interests of the Club shall be 1250 Living Units. If a Living Unit is owned by one (1) natural person, the right to vote shall be established by the record title. If a Living Unit is owned jointly by two (2) or more natural persons, that Living Unit's vote may be cast by any one (1) of the record owners. If two (2) or more Owners do not agree among themselves how their one (1) vote shall be cast on any issue, that vote shall not be counted for any purpose.

**2.2 Method of Voting.** Except for the election of Directors, and except for actions taken by the Club members without a meeting (as specified in Section 3.12), all votes of the Club members pertaining to the Club shall be cast in person (by a meeting ballot) or by proxy and pursuant to the voting procedure set forth in this Section 2.2. Nothing herein shall require the use of secret ballots unless such use is required by law.

Each Club member resides in a Neighborhood and is a member of a Neighborhood Association, which is comprised of a certain number of Living Units. The number of total Living Units within each Neighborhood is set forth in Section 11.5 of the Declaration of Covenants. The Club is comprised of a total of 1250 Living Units within a total of 21 Neighborhoods.

Block voting by any Neighborhood Association via its Voting Representative at Club membership meetings on matters pertaining to the Club is prohibited. In the event of a conflict between these Club Bylaws and the Neighborhood Association governing documents (or any Neighborhood Association Board resolution or policy) on matters pertaining to voting on Club matters, the terms and conditions of these Club Bylaws shall prevail.

The Club will notify each Club member of a proposed Club matter which requires a vote of the Club members and which vote will be conducted at a Club membership meeting per the notification requirements contained within these Club Bylaws. The Club members will initially individually cast their votes regarding the proposed Club matter directly with the Club, in person (by meeting ballot) or by proxy, at a Club membership meeting but an individual Club member's vote will be formally cast at the Club membership meeting by the Voting Representative from that member's Neighborhood Association. Voting Representatives are required to vote on a proposed Club matter as directed by the Club members of their respective Neighborhood Associations and pursuant to the voting procedure mandated in these Club Bylaws and each Voting Representative hereby covenants to do so. The Club will tabulate the results of the votes cast by the Club members, in person (by meeting ballot) or by proxy, at the Club membership meeting. Then, the total votes attributable to each Neighborhood Association will be calculated as follows: (1) The "total voting percentages" (to three decimal points, if necessary [ex. 52.354%]) of the votes actually cast by the Club members, in person (by meeting ballot) or by proxy, from a given Neighborhood Association both in favor of the proposed Club measure and against the proposed Club measure will be calculated. (2) The "total voting percentages" will then be multiplied by the total number of Living Units within that Neighborhood Association resulting in a "final tally" of "yea" votes and "nay" votes which (when added together) will equal the total number of Living Units within said Neighborhood Association. (3) If the "final tally" is a fractional number (to three decimal points, if necessary), the Club will "round up" to the next whole number any "final tally" higher than ".499" and the Club will "round down" to the next whole number any "final tally" of ".499" or lower such that no Neighborhood Association will have more votes attributable to their Neighborhood Association than the number of Living Units within said Neighborhood Association and as set forth in Section 11.5 of the Declaration. The Voting Representative from each Neighborhood Association will then cast the votes of the Club members of such Neighborhood Association in accordance with the "final tally" of the "yea" votes and "nay" votes as set forth above. The following is an example as to how this voting percentage mechanism works:

In a Neighborhood Association with 252 Living Units (i.e. 252 potential votes on a Club measure), where a poll of that Neighborhood Association's members results in 87 "yeas" to a proposed Club measure and 81 "nays" to the same measure, with 84 votes not being cast, the "total voting percentages" (of the votes cast) is 51.786 percent in favor of the proposed Club measure and 48.214 percent opposed to the proposed Club measure. This 51.786 voting percentage in favor (i.e. the "yea" votes in this example) is then multiplied by 252 Living Units, resulting in a "final tally" of 130.500, or 131 "yea" votes (after rounding up). The corresponding 48.214 voting percentage attributable to the "nay" votes is likewise multiplied by 252 Living Units, resulting in a "final tally" of 121 "nay" votes (after rounding down). The Voting Representative of



this Neighborhood Association will cast the 252 votes of the members of the Neighborhood Association as follows: 131 "yea" votes and 121 "nay" votes.

In the event all the possible votes attributable to the Club members within a given Neighborhood Association are cast, in person (by meeting ballot) or by proxy, on a proposed Club measure, the "total voting percentages" and "final tally" (referenced above) will not need to be calculated or utilized (since all the possible votes were cast). In this scenario, the Voting Representative of that Neighborhood Association will cast the votes of the Neighborhood Association as cast by the Club members from that Neighborhood Association.

In the event that no votes attributable to a given Neighborhood Association are cast by the Club members of that Neighborhood Association, no further calculations will be necessary and all the votes attributable to this Neighborhood Association will be considered "nay" votes (or votes opposed to the proposed Club measure). In this scenario, the Voting Representative of that Neighborhood Association will cast all the votes of the Club members of that Neighborhood Association as "nay" votes.

The above-described voting procedure shall be utilized to vote on a proposed Club matter at a Club membership meeting wherein a quorum, as specified by Section 3.3, has been attained.

In the event that two or more of the Neighborhood Associations merge into one corporate entity, the voting procedure mandated by these Club Bylaws shall still be utilized with the number of Living Units attributable to the surviving Neighborhood Association adjusted accordingly.

In the event a Voting Representative fails to attend a Club membership meeting, or fails to cast his or her Neighborhood Association's votes as required by the above-described voting procedure, or in the event a Neighborhood Association fails to appoint a Voting Representative, the Club Secretary, or, in the absence of the Club Secretary, another Club Officer shall serve as the Voting Representative for that Neighborhood Association and shall cast the votes of the Club members from that Neighborhood Association as decided and directed by each such Club member and pursuant to the voting procedure mandated in these Club Bylaws and such Club Officer hereby covenants to do so. Any votes cast by a Voting Representative contrary to the above-described voting procedure shall be null and void.

**2.3 Membership Records.** Records shall be maintained by the Club showing the names of the members, their addresses, and e-mail addresses the number of parcels owned by each member, the class of membership and such other information as the Board shall require. Members may be issued a certificate or other evidence of membership, which may be wallet-size. The certificate of membership may set forth such other information as determined by the Board. Admission to any Common Area, facility, meeting or affair of the Club may be conditioned upon production of a current certificate of membership by the member unless member privileges have been suspended.

**2.4 Transfer of Membership.** Except as provided in Section 2.6 below, no member may transfer his Club membership, except as an appurtenance to his parcel. When a member ceases to be an owner, his membership shall cease. The termination of membership in the Club does not relieve or release any former member from liability or obligation incurred under or in any way connected with the Club during the period of his membership, nor does it impair any rights or remedies which the Club may have against any former member arising out of or in any way connected with such membership and the covenants and obligations incident thereto. A change of membership is effective upon transfer of title to the Living Unit. Interim membership is not transferrable.

## 2.5 Rights and Privileges of Members.

- (A) Every member shall have the right to:
- (1) Have his vote cast by his voting representative at the meetings of the members;
  - (2) Serve on the Board, if elected;
  - (3) Serve on committees; and
  - (4) Attend membership meetings.

Each member is encouraged to take an active interest in Club affairs.

(B) Every member in good standing shall have the privilege of using and enjoying the Common Areas, subject to the rules of the Club and the right of the Club to charge admission and other fees for the use of any facilities.

(C) A member is in good standing if he is current in the payment of all assessments and other financial obligations to the Club, and his membership is not suspended.

## 2.6 Delegation of Rights to Use Common Areas.

(A) In accordance with Section 4.4 of the Declaration of Covenants, Conditions and Restrictions, a member may delegate his privilege to use the Common Areas to:

- (1) A reasonable number of guests if initially accompanied by the member; or
- (2) Residential tenants who reside in the member's parcel.

(B) In the case of residential tenants of the member's parcel, the delegating member must give prior written notice to the Club of such delegation. The written notification shall state the name, age, permanent address, intended length of time the delegation will be effective, and such other information about each residential tenant as the Board shall require.

(C) A member who has delegated his use privileges and is not in residence in Heritage Bay Golf & Country Club may not use Common Areas during the period of the delegation, except as a guest of another member. A member may not be the guest of his tenant.

(D) Members shall be responsible for keeping the Club informed as to the identity and relationship of any persons who normally reside with the member and intend to utilize the Common Areas.

(E) The Board of Directors may limit the number of guests or the frequency or duration of any member's delegation of use rights, and may impose fees for the delegation of such rights of use of the facilities by renters or guests, which fees may be different from fees charged to members for their use.

(F) The delegation of membership is subject to the one (1) family limitation described in Section 4.2 of the Club Declaration.

### 3. MEMBERS' MEETINGS; VOTING.

**3.1 Annual Meeting.** The annual meeting shall be held at Heritage Bay during either March or April of each year, at a day, place and time designated by the Board of Directors, for the purpose of electing Directors and transacting any other business duly authorized to be transacted by the members.

**3.2 Special Members' Meetings.** Special members' meetings must be held whenever called for by the President or by a majority of the Directors, and must be promptly called by the Board upon receipt of a written request signed by voting representatives of members entitled to cast at least ten percent (10%) of the votes. Such requests shall be in writing and shall state the purpose or purposes of the meeting. Business at any special meeting shall be limited to the items specified in the request or contained in the notice of meeting.

**3.3 Quorum.** A quorum shall be attained at a members meeting by the presence in person of voting representatives for at least thirty percent (30%) of the total voting interests. Voting interests of Association owned units shall not be considered for purposes of a quorum or counted for any purpose.

**3.4 Vote Required to Transact Business.** The acts or resolutions approved by at least a majority of the votes cast at a duly called meeting at which a quorum has been attained shall be the act of the members, unless a higher vote is specifically required by law or by the Club Declaration.

**3.5 Notice of Meetings.** Written notice of meetings shall be mailed, electronically transmitted or hand-delivered directly by the Club to the Club members and directly by the Club to the Voting Representatives. The notices must be mailed, electronically transmitted or delivered by the Club to the Club members and the Voting Representatives not less than thirty (30) days prior to the date of the meeting. Notices must also be posted in a conspicuous place on the Club common areas or may be broadcast pursuant to Section 720.306(5), Florida Statutes. Notices of meetings where assessments will be considered must state the purpose of the meeting and the assessment under consideration.

**3.6 Proxy Voting.** Members may cast their votes at a meeting in person or by proxy. A proxy shall be valid only for the specific meeting for which originally given and any lawful adjournment of that meeting. No proxy shall be valid for a period longer than ninety (90) days after the date of the first meeting for which it was given. Every proxy shall be revocable at the pleasure of the person executing it. To be valid, a proxy must be in writing, dated, signed by the person authorized to cast the vote for the Living Unit, specify the date, time and place of the meeting for which it is given, and must be delivered to the Secretary by the appointed time of the meeting or adjournment thereof. No proxy shall be valid if it names more than one (1) person as the holder of the proxy, but the holder shall have the right, if the proxy so provides, to substitute another person to hold the proxy. Holders of proxies must be members. Limited proxies may be used in matters requiring a vote of the Owners. General proxies may be used for other matters for which limited proxies are not required. No proxies, general or limited, may be used in the election of Directors. In addition, the Board shall have the authority to adopt reasonable Rules and Regulation regarding the use of a power of attorney, including the ability of any agent in fact to attend a meeting of the members or a meeting of the Board of Directors. Proxies shall be cast in a manner consistent with Section 2.2 of these Bylaws.

**3.7 Voting Representatives.** Each Neighborhood Association shall appoint and designate in writing to the Secretary of the Club, at least annually by January 1st of each year, the name and address of one individual who will serve as its Voting Representative, or the alternate, if any, for that year. The person will:

- (A) Receive Club notices, but Club notices which pertain to voting matters shall also be sent directly from the Club to each Club member;
- (B) Represent the members of that particular Neighborhood Association at Club meetings;
- (C) Cast the votes of the Club members from that particular Neighborhood Association as mandated via the procedure (and exclusions) contained within Section 2.2 of these Club Bylaws.

An alternate Voting Representative may be designated by a Neighborhood Association to serve in the absence or disability of the Voting Representative. The Voting Representative and the alternate Voting Representative (if any) serve at the pleasure of the entity which appointed them.

**3.8 Adjourned Meetings.** Any duly called meeting of the members may be adjourned to be reconvened at a later time by vote of the majority of the voting interests present, regardless of whether a quorum has been attained. Unless the Bylaws require otherwise, adjournment of annual or special meeting to a different date, time or place must be announced at that meeting before an adjournment is taken, or notice must be given of the new date, time, or place pursuant to Section 617, Florida Statutes as amended. Any business that might have been transacted on the original date of the meeting may be transacted at the adjourned meeting. If a new record date for the adjourned meeting is or must be fixed under Section 617, Florida Statutes, as amended, notice of the adjourned meeting must be given to persons who are entitled to vote and are members as of the new record date but were not members as of the previous record date.

**3.9 Order of Business.** The order of business at members' meetings shall be substantially as follows:

- (A) Determination that a quorum has been attained.
- (B) Reading or waiver of reading of minutes of last members' meeting.
- (C) Reports of Officers
- (D) Reports of Committees
- (E) Election of Directors (when appropriate)
- (F) Unfinished Business\*
- (G) New Business\*
- (H) Adjournment

\* Such business should be identified with specificity.

**3.10 Minutes.** Minutes of all meetings of the members must be maintained in written form, or in another form that can be converted into written form within thirty (30) days after the meeting at which they were taken

**3.11 Parliamentary Rules.** Roberts' Rules of Order (latest edition) shall govern the conduct of the Club meetings when not in conflict with the law, with the Declaration of Covenants, or with these Bylaws. The presiding officer may appoint a Parliamentarian, but the decision of the presiding officer on questions of parliamentary procedure shall be final. Any question or point of order not raised at the meeting to which it relates shall be deemed waived.

**3.12 Action by Members Without a Meeting.** Except for the holding of the annual meeting and annual election of Directors, any action required or permitted to be taken at a meeting of the members may be taken by mail without a meeting if written instruments expressing approval of the action proposed to be taken are signed and returned by members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all of the voting interests were present and voting. If the requisite number of written consents are received by the Secretary within sixty (60) days after the earliest date which appears on any of the consent forms received, the proposed action so authorized shall be of full force and effect as if the action had been approved at a meeting of the members held on the sixtieth (60th) day. Within ten (10) days thereafter, the Board shall send written notice of the action taken to all members who have not consented in writing. Nothing in this paragraph affects the rights of members to call a special meeting of the membership, as provided for by Section 3.2 above, or by law.

**3.13 Special Notice Requirements; Electronic Transmission.** Notice of member meetings, and other written communications, except meetings for the purpose of recalling Directors, may be given by electronic transmission such as fax and e-mail provided written consent has been received by the Club from the member.

**3.14 Electronic Voting.** The Association may conduct elections and other owner votes through an internet-based online voting system with owner consent that has been received by the Club.

**4. BOARD OF DIRECTORS.** The administration of the affairs of the Club shall be by a Board of Directors. All powers and duties granted to the Club by law, as modified and explained in the Declaration of Covenants, Articles of Incorporation, and these Bylaws, shall be exercised by the Board, subject to the approval or consent of the members only when such is expressly required.

**4.1 Powers.** The Board shall have the authority to:

- (A) Manage and control the affairs of the Club.
- (B) Appoint and remove at its pleasure all officers, agents and employees of the Club, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient.
- (C) Establish, levy, assess, and collect any assessment or charge provided for in the governing documents.
- (D) Designate one or more financial institution(s) as depository for Club funds, and the officer(s) authorized to make withdrawals therefrom.

(E) Borrow funds and pledge the assets of the Club for improving the Common Areas, and in aid thereof, to mortgage Common Areas as security for said loan. Notwithstanding the foregoing, the Board of Directors must obtain approval of a majority of those members who are eligible to vote and who are present, in person or by proxy, at a duly called meeting of the Members at which a quorum is attained in order to borrow funds equal to or greater than two percent (2%) of the Club's annual operating budget excluding reserves.

(F) Adopt, amend or revoke rules, and regulations relating to the use of Common Areas and policies relating to the management, control and operations of the Club. Fines and suspensions may be imposed for violations of the Governing Documents. Any rule or regulation created and imposed by the Board must be reasonably related to the promotion of health, happiness and peace of mind of the majority of the owners, and uniformly applied and enforced. The Board may also establish and levy fees for the use of Common Areas or Club property.

(G) Cause the Club to employ sufficient personnel to adequately perform the responsibilities of the Club.

(H) Negotiate and enter into contracts for the maintenance and operation of the Common Areas.

(I) Make improvements to the Common Areas.

(J) Establish committees of the Club and appoint the members thereof. It may assign to such committees responsibilities and duties not inconsistent with the provisions of these Bylaws as it may deem appropriate.

(K) Acquire property, real or personal, and enter into agreements with any persons, relating to the orderly transfer of property from said person to the Club and such other matters as the Board may deem appropriate.

(L) Perform all other acts not inconsistent with law or the governing documents and necessary for the proper functioning of the Club.

**4.2 Number; Qualifications; and Eligibility.** Each Director elected by the regular members must be a member, or the spouse of a member. Each Director elected by the members to represent a single voting group must be an Owner or the spouse of an Owner of a parcel in the Neighborhoods comprising that voting group. A vacancy is created, and a new Director shall be appointed pursuant to Section 4.5 of these Bylaws, if and when a Director who has been elected by and from a single voting group to represent that single voting group ceases to be eligible to serve that voting group (i.e. the Director is no longer an Owner or the spouse of an Owner of a parcel in a Neighborhood within the voting group that the Director was elected to represent).

**4.3 Terms of Office.** In order to provide for a continuity of experience a system of staggered terms of office has previously been established. Each Director shall be elected for a term of two (2) years, which will end upon final adjournment of the annual meeting in conjunction with which the Director's successor is to be elected. There is no limit on the number of consecutive terms to which a Director may be elected. A resignation must be in writing to be effective, and may not be revoked once the resignation is tendered and received by the Club.

**4.4 Nominations and Elections.** The Members in each voting group are entitled to vote in the election of the Directors that represent their voting group, as well as in the election of a Directors at large.

(A) **Candidates.** The Club Board shall adopt and utilize procedures whereby any member or other person eligible to serve as a Director may nominate themselves as a candidate and have his/her name on the ballot, by notifying the Club in writing, at least forty-five (45) days in advance of the election, of his desire to be a candidate for any vacancy which he/her is eligible to fill and include a one page candidate information sheet, if any. To the extent that any person desiring to run for the Board owns multiple properties located in more than one voting group, and is therefore eligible to run as a candidate from multiple voting groups, that candidate is only eligible to run and be placed on the ballot to run for the Board from one voting group. In addition, all candidates running for the Board must designate in writing whether they wish to run and be placed on the ballot from their voting group or run as a candidate "at large" but not both. All eligible persons giving timely written notice of desire to be a candidate shall be listed alphabetically by surname on any ballots distributed or used by the Club. Candidates may also be nominated in any other way permitted by law.

(B) **Election and Voting Materials.** Candidates shall have a reasonable opportunity to communicate their qualifications to the voting members and to solicit votes at their own expense. Any written materials distributed to the members of the Club regarding any election shall be non-partisan, and Club funds shall not be used in any way to promote the election of any candidate over another. No ballot or other election materials used by the Club shall endorse, disparage, or comment on any candidate or indicate whether a candidate is an incumbent, however, the Club shall duplicate and distribute without editing candidate information sheets provided by any candidates who would like it distributed. The ballots and all other election and voting materials shall be distributed by the Club with the notice of annual meeting described in Section 3.5 above.

(C) **Balloting.** Elections shall be by written ballot. The candidate within each voting group who receives a plurality of the votes cast shall be elected. The balloting for at large seats (if any) shall be separate. Each member may cast as many votes as there are Directors to be elected by his Group, but not more than one vote for any candidate. Each member may also cast one vote for each Director to be elected at large, if any, it being the intent hereof that cumulative voting is prohibited. The Club shall conduct Board elections for each voting group and for the Board member elected at large. The Club will furnish the notice of the Annual Meeting to each member which will include: (i) the names of all candidates and any candidate information sheets if timely furnished by the candidate and which must be limited to one page, (ii) ballots which bear a marking or color indicating the voting group, (iii) a return envelope to be used to return the ballot which envelope may, but is not required to, bear a marking or color indicating the voting group for which the ballot is being returned, and (iv) the time and place for counting ballots at which any member may be present to observe the tallying of votes for each voting group. In order to be valid and counted, all ballots must either be signed by the member eligible to cast the vote or, alternatively, the member casting the ballot must sign and print their name and identify the member's Heritage Bay address on the outside of the return envelope. Either the ballot itself or the outside ballot envelope must be signed by the member casting the vote. Original ballots must be returned and delivered to the Club by 5 P.M. EST

on the day before the date of the annual meeting to be counted. Faxes, copies, or emails containing ballots will not be counted and must be disregarded.

(D) **Vote Counting.** On the day of the annual meeting, before the meeting begins, at a place and time which was stated in the notice of the meeting, the Board (or its designees) shall open the sealed envelopes and count the votes in such manner as it (or they) deem advisable. Any member shall be entitled to attend and observe. The results of the election shall be announced at the beginning of the annual meeting, and the new Directors shall take office at the final adjournment of the meeting. A tie vote shall be broken by agreement between the tied candidates, or, in the absence of agreement, by lot. Any dispute as to the validity of any ballots shall be resolved by the incumbent Board.

**4.5 Vacancies on the Board.** If the office of any Director or Directors becomes vacant for any reason, a majority of the remaining Directors, though less than a quorum, shall promptly choose a successor or successors, who shall hold office for the entire remaining term. Any Director appointed by the Board shall be selected from the Class of members or voting group who elected the Director who vacated the position. If for any reason there should arise circumstances in which no Directors are serving and the entire Board is vacant, the members shall elect successors at a special meeting by the same method as is provided for in Sections 4.2 through 4.4 above.

**4.6 Removal.** Any Director may be removed from the Board with or without cause by vote of a majority of the voting interests of the voting group which elected that Director. Directors may also be removed as provided in Section 4.8 below.

**4.7 Organizational Meeting.** An organizational meeting of a new Board of Directors shall be held within ten (10) days after the election of new Directors at such place and time as may be fixed by the new Directors at the meeting when they were elected.

**4.8 Regular Meetings.** Meetings of the Board shall be held at such time and place in Collier County, Florida, as shall be determined from time to time by the Directors. A regular meeting of the Board of Directors is any meeting held according to a regular weekly, monthly or other periodic schedule adopted from time to time by the Board. Notice of regular meetings shall be given to each Director, personally or by mail, email, or telephone at least ten (10) days before the day named for such meeting. At regular meetings any business of the Club may be transacted. If any Director elected by the members shall be absent for any reason from three (3) consecutive regular meetings of the Board, the Board may, by vote of at least a majority of the whole Board taken at the next meeting, declare the office of said Director to be vacant, and may appoint a successor.

**4.9 Special Meetings.** Special meetings of the Board are all meetings other than the annual organizational meeting and regular meetings. Special meetings may be called by the President, the Secretary, or by a majority of the Directors. Not less than two (2) days' notice of a special meeting shall be given to each Director, personally or by mail, email or telephone which notice shall state the time, place and purposes of the meeting. Business conducted at a special meeting shall be limited to the items specified in the notice of the meeting.

**4.10 Waiver of Notice by Directors.** Any Director may waive notice of a Board meeting before or after the meeting, and such waiver shall be deemed equivalent to the receipt of notice. Attendance at a meeting by any Director constitutes waiver of notice, unless that Director objects to the lack of notice at the beginning of the meeting.



**4.11 Board Meetings; Notice to Members.** A meeting of the Board of Directors occurs whenever a quorum of the Board gathers and conducts Club business. All meetings of the Board shall be open to all members, except meetings governed by the attorney-client privilege or discussing personnel matters. Notice of all Board meetings shall be posted in a conspicuous place on the Common Areas at least forty-eight (48) continuous hours in advance of a meeting, except in an emergency. An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of such assessments. Any owner may make video or audio recordings of meetings of the Board and meetings of the members. The Board may adopt reasonable rules governing the taping of meetings of the Board and the membership.

**4.12 Quorum of Directors.** A quorum at a Board meeting shall exist only when a majority of all Directors are present in person. Directors may not vote by proxy or secret ballots at Board meetings, except that secret ballots may be used in electing officers. Any Director has a right to participate in any meeting of the Board, or meeting of an executive or other committee, by means of a conference telephone call or similar communicative arrangement whereby all persons present can hear and speak to all other persons. Participation by such means shall be deemed equivalent to presence in person.

**4.13 Vote Required.** Except as otherwise required by law or the governing documents, the acts approved by a majority of the Directors present and voting at a duly called Board meeting at which a quorum exists shall constitute the acts of the Board of Directors.

**4.14 Presumption of Assent.** A Director who is present at a meeting of the Board shall be deemed to have voted in favor of the point of view that prevails on any question, unless he voted against such action or abstained from voting because of an asserted conflict of interest. The vote of each Director on each matter considered, including abstention because of an asserted conflict of interest, must be recorded in the minutes of the meeting. Directors may not vote by proxy or secret ballot at Board meetings, except that secret ballots may be used in the election or removal of Officers

**4.15 Adjourned Meetings.** The majority of the Directors present at any meeting of the Board, regardless of whether a quorum exists, may adjourn the meeting to be reconvened at a later time. When the meeting is reconvened, provided a quorum exists, any business that might have been transacted at the meeting originally called may be transacted without further notice.

**4.16 The Presiding Officer.** The President of the Club, or in his absence, the Vice President, shall be the presiding officer at all meetings of the Board of Directors. If neither is present, the presiding officer shall be selected by majority vote of those present.

**4.17 Compensation of Directors and Officers.** Neither Directors nor officers shall receive compensation for their services as such. Directors may not also be employees of the Club. Directors and officers may be compensated for all actual and proper out-of-pocket expenses relating to the proper discharge of their respective duties.

**4.18 Emergency Powers.** In the event of an 'emergency' as defined in Paragraph 4.18(G) below, the Board of Directors of the Club may exercise the emergency powers described in this Section, and any other emergency powers authorized by, Section 720.316, Florida Statutes, as amended from time to time.

(A) The Board may name as assistant officers persons who are not Directors, which assistant officers shall have the same authority as the executive officers to whom they are

assistant during the period of the emergency, to accommodate the incapacity of any officer of the Club.

(B) The Board may relocate the principal office or designate alternative principal offices or authorize the officers to do so.

(C) During any emergency the Board may hold meetings with notice given only to those Directors with whom it is practicable to communicate, and the notice may be given in any practical manner. The Director or Directors in attendance at such a meeting shall constitute a quorum.

(D) Corporate action taken in good faith during an emergency under this Section to further the ordinary affairs of the Club shall bind the Club; and shall have the rebuttable presumption of being reasonable and necessary.

(E) Any officer, Director or employee of the Club acting with a reasonable belief that his actions are lawful in accordance with these emergency Bylaws shall incur no liability for doing so, except in the case of willful misconduct.

(F) The provisions of these emergency Bylaws shall supersede any inconsistent or contrary provisions of the Bylaws during the period of the emergency.

(G) For purposes of this Section, an "emergency" exists only during a period of time that the Community, or the immediate geographic area in which the Community is located, is subjected to:

- (1) a state of emergency declared by law enforcement authorities;
- (2) a hurricane warning;
- (3) a partial or complete evacuation order;
- (4) designation by federal or state government as a "disaster area;" or
- (5) a catastrophic occurrence, whether natural or man-made, which seriously damages or threatens serious damage to the Community, such as an earthquake, tidal wave, fire, hurricane, tornado, war, civil unrest, or acts of terrorism.

**4.19 Appointment of Committees and Committee Members.** Except for the Architectural Review Committee (ARC) as provided elsewhere in these Bylaws, the Board of Directors may appoint from time to time such standing or temporary committees, as the Board may deem necessary and convenient for the efficient and effective operation of the Association. Any such committee shall have the powers and duties assigned to it in the resolution creating the committee. Members of a committee appointed by the Board of Directors may only be removed by the Board of Directors.

## **5. OFFICERS.**

**5.1 Officers and Elections.** The executive officers of the Club shall be a President, and one or more Vice Presidents, who must be Directors of the Club, as well as a Treasurer and a Secretary, all of

whom shall be elected annually by majority vote of the Board of Directors. Any officer may be removed, with or without cause, by vote of a majority of all Directors at any meeting. Any person except the President may hold two or more offices. The Board of Directors shall, from time to time, appoint such other officers, and designate their powers and duties, as the Board shall find to be required to manage the affairs of the Club. If the Board so determines, there may be more than one Vice President.

**5.2 President.** The President shall be the chief executive officer of the Club; he shall preside at all meetings of the members and Directors, shall be ex-officio a member of all standing committees, shall have general and active management of the business of the Club, and shall see that all orders and resolutions of the Board are carried into effect. He shall execute bonds, mortgages and other contracts or documents requiring the seal of the Club, except where such are permitted by law to be otherwise executed, and the power to execute is delegated by the Board of Directors to another officer or agent of the Club.

**5.3 Vice Presidents.** The Vice Presidents in the order of their seniority shall, in the absence or disability of the President, perform the duties and exercise the powers of the President; and they shall perform such other duties as the Board of Directors shall prescribe.

**5.4 Secretary.** The Secretary shall attend the meetings of the Board and meetings of the members, and shall record all votes and the minutes of all proceedings in a book or books. He shall give, or cause to be given, notice of all meetings of the members and of the Board of Directors, and shall perform such other duties as may be prescribed by the Board or the President. He shall keep in safe custody the seal of the Club and, when authorized by the Board, affix the same to any instrument requiring it. The Secretary shall be responsible for the proper recording of all duly adopted amendments to the governing documents. Any of the foregoing duties may be performed by an Assistant Secretary, if any has been designated.

**5.5 Treasurer.** The Treasurer shall have responsibility for the collection, safe-keeping, and disbursement of funds and securities of the Club, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Club, and shall deposit all monies and other valuable effects in the name and to the credit of the Club in such depositories as may be designated by the Board of Directors, and prepare the budget for the Club. He shall disburse the funds of the Club, making proper vouchers for such disbursements, and shall render to the President and Directors, at the regular meetings of the Board, or whenever they may require it, an account of all transactions and of the financial condition of the Club. Any of the foregoing duties may be performed by an Assistant Treasurer, if any has been designated.

**6. ARCHITECTURAL REVIEW COMMITTEE.** The ARC provided for in Section 6 of the Declaration of Covenants shall be selected, and conduct its affairs as provided in this Section.

**6.1 Members; Qualification.** The Architectural Review Committee, hereinafter the "ARC," shall consist of five (5) persons, and except as otherwise provided in Section 6.5 below, no member of the ARC shall be a Director. Whenever possible and practical, one of the committee members should be an architect, general contractor, or other person with professional expertise in building, landscaping, or architectural design.

**6.2 Selection; Terms.** The Members of the ARC shall be appointed by the President of the Club to serve terms of one year beginning on the first day of the calendar month immediately following each annual meeting of the Club. If a mid-term vacancy occurs for any reason, the President shall appoint a successor to fill the unexpired term. Members of the ARC, once appointed, may be removed only by vote of a majority of all the Voting Interests, and not by the officers or Directors.

**6.3 Compensation.** If approved by the Board of Directors, any or all members of the ARC may be compensated for their services.

**6.4 Meetings.** The ARC shall meet at least once during each quarter, and otherwise at the call of the Chairman as necessary, to carry out its duties and functions. The ARC shall meet with the same formalities and notice requirements as required for Board meetings, unless otherwise permitted by law. Written notice of meetings shall be provided to each Neighborhood Association at least one week in advance, any Owner wishing to appear before the ARC may do so. Special meetings may be called as needed by the Chairman.

**6.5 Procedures; Voting.** A majority of the members of the ARC present in person at any duly called meeting shall constitute a quorum. All questions shall be decided by a majority of the entire committee. The members shall not vote by proxy or secret ballot. Where a question involves proposed changes to a parcel owned by a member of the ARC, that member shall be disqualified from participation in the proceedings, and his place shall be taken by the then President of the Club. If a proposed change is not approved, the reasons for disapproval shall be stated in writing. Minutes of all meetings of the ARC shall be kept in a business-like manner, and shall be available at reasonable times for inspection or photocopying by any member. Copies of the plans and specifications for all approved changes and construction shall be kept for at least five years.

**7. FISCAL MATTERS.** The provisions for assessment and fiscal management of the Club set forth in the Declaration of Covenants shall be supplemented by the following provisions:

**7.1 Depository.** The Club shall maintain its accounts in federally insured accounts at financial institutions as may be designated from time to time by the Board. Withdrawal of monies from such accounts shall be only by such persons as are authorized by the Board. The Board may invest Club funds in interest-bearing accounts, money market funds, certificates of deposit, U.S. Government securities, and other similar investment vehicles, provided they are federally insured, or backed by the full faith and credit of the United States.

**7.2 Budget.** The Board of Directors shall, at a Board meeting held in November of each year, adopt a budget of general expenses for the next fiscal year. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities. The Club shall provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. The proposed budget shall be detailed and shall show the amounts budgeted by accounts and expense classifications.

**7.3 Reserves.** The Board may establish in the budgets one or more reserve accounts for contingencies, operating expenses, repairs, improvements, capital expenditures or deferred maintenance. The purpose of the reserves is to provide financial stability and to avoid the need for special assessments. The amounts proposed to be so reserved shall be shown in the proposed annual

budgets each year. These funds may be spent only for purposes for which they were reserved, unless another use is approved by unanimous consent of the entire Board.

**7.4 Fidelity Bonds.** The Treasurer, President and Secretary and all other persons who are authorized to sign checks, and all Directors and employees of the Club handling or responsible for Club funds, shall be bonded in such amounts as determined by the Board of Directors. The premiums on such bonds shall be paid by the Club.

**7.5 Accounts and Accounting Procedures.** The financial and accounting records of the Club must be kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least seven (7) years. The financial and accounting records must include:

- (A) Accurate, itemized and detailed records of all receipts and expenditures.
- (B) A current account and a period statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
- (C) All tax returns, financial statements, and financial reports of the Club.
- (D) Any other records that identify, measure, record or communicate financial information.

**7.6 Financial Reporting.** The Club shall prepare an annual financial report within ninety (90) days after the close of the fiscal year. The Club shall, within twenty-one (21) days after the report is prepared and completed but not later than 120 days after the end of the fiscal year, provide each member with a copy of the report, or a written notice that a copy of the financial report is available upon request at no charge to the member. The financial report must consist of either:

- (A) Financial statements presented in conformity with generally accepted accounting principles; or
- (B) A financial report of actual receipts and expenditures, cash basis, which report must show:
  - (1) The amount of receipts and expenditures by classification; and
  - (2) The beginning and ending cash balances of the Club.

**7.7 Audits.** A formal certified annual audit of the accounts of the Club, shall be made by an independent certified public accountant, and a copy of the audit report shall be available on request to each member.

**7.8 Application of Payments and Commingling of Funds.** All monies collected by the Club may be commingled, for investment purposes only, in a single fund, or divided into two or more funds, as determined by the Board of Directors. The books and records of the Club shall be kept in conformity to generally accepted accounting principles, and the audit and accounting guide for Common Interest Realty Associations of the American Institute of Certified Public Accountants. All payments on account by an Owner shall be applied as to interest, delinquencies, costs and attorney's fees, other

charges, and annual or special assessments, in such manner and amounts as the Board of Directors may determine, or as may be required by law.

**7.9 Fiscal Year.** The fiscal year for the Club shall begin on the first day of January each year. The Board of Directors may change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed in the Internal Revenue Code of the United States.

**7.10 Payment of Assessments.** Annual assessments based on the adopted budgets shall be payable annually (due on January 1 of each year or such other date as the Board of Directors may determine). Written notice of the annual assessment shall be sent to all owners at least thirty (30) days prior to the due date. Failure to send or receive such notice shall not, however, excuse the obligation to pay. By resolution, the Board may establish the place for payment, the method of payment, and a late payment fee.

**7.11 Special Assessments.** Special assessments may be imposed by the Board of Directors whenever necessary to meet unbudgeted, emergency, or non-recurring expenses, or for such other purposes as are authorized by the Declaration of Covenants or these Bylaws. Special assessments are due on the day specified in the resolution of the Board approving such assessment. The notice of any special assessment must contain a statement of the purpose(s) of the assessment, and the funds collected must be spent for the stated purpose(s) or returned to the members in a manner consistent with law. The total of all special assessments payable by the members generally shall not exceed \$200 per parcel in any fiscal year unless approved in advance by a majority of the Members who are eligible to vote and present, in person or by proxy, at a duly called meeting of the Members.

**7.12 Proof of Payment.** Within fifteen (15) days after receipt of request from the Owner, mortgagee, or purchaser of a parcel, the Club shall furnish a written statement certifying that all assessments then due from any parcel have been paid, or indicating the amounts then due. Anyone other than the Owner who relies upon such statement shall be protected thereby.

**7.13 Membership Transfers.** The Club shall not be required to transfer memberships on its books or to allow the exercise of any rights or privileges of membership on account thereof to any owner, or to any persons claiming under an owner, unless and until all assessments and charges to which said owner and his parcel is subject have been paid in full.

**8. COMPLIANCE AND DEFAULT; REMEDIES.** In addition to the remedies provided in the Declaration, the following shall apply:

**8.1 Fines.** The Club's Board of Directors may levy fines against Living Units whose owners commit violations of the provisions of Governing Documents, including but not limited to the Rules and Regulations, or who condone such violations by their family members, guests or lessees. Fines shall be in amounts deemed necessary by the Board of Directors to deter future violations, but in no event shall any fine exceed the maximum amount allowed by law.

**8.2 Suspensions.** The Board of Directors has the right to suspend certain use rights and voting rights in accordance with the provisions of the Declaration and the following:

(A) Suspension of Use Rights If Delinquent. If an owner is more than ninety (90) days delinquent in paying a fee, fine, or other monetary obligation due to the Club, the Board of Directors may suspend the right of the owner or the Living Unit's occupants, guests, tenants

or other invitees to use common areas, common facilities, or any other Club property until the fee, fine, or other monetary obligation is paid in full. Suspension does not apply to limited common elements or areas intended to be used only by that Living Unit, common areas and roadways needed to access the Living Unit, utility services provided to that unit, or parking spaces. The notice and hearing requirements do not apply to suspensions imposed for financial delinquencies. Notification of suspension shall be given to the owner by management.

(B) Suspension of Voting Rights If Delinquent. The Board of Directors may suspend the voting rights of an owner due to nonpayment of any fee, fine, or other monetary obligation due to the Club which is more than ninety (90) days delinquent. A voting interest which has been suspended shall be subtracted from the total number of voting interests, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under the documents. The suspension ends upon full payment of all obligations currently due or overdue to the Club. The notice and hearing requirements do not apply to suspensions imposed for financial delinquencies. Notification of suspension shall be given to the owner by management.

(C) Suspension of Use Rights for Document Violations. If an owner, tenant, guest, or invitee fails to comply with any provision of the Declaration, Bylaws or Rules and Regulations then the Board of Directors may suspend, for a reasonable time, the right of a member or a member's tenant, guest or invitee to use common areas and facilities.

**8.3 Availability of Remedies.** Each member, for himself, his heirs, successors and assigns, agrees to the foregoing provisions relating to default and abatement of violations regardless of the harshness of the remedy utilized by the Club and regardless of the availability of other legal remedies. It is the intent of all members to give the Club methods and procedures which will enable it to operate on a businesslike basis, to collect those monies due it and to preserve the right of the majority to enjoy the property free from unreasonable disruptions and annoyance.

**9. AMENDMENT OF BYLAWS.** Amendments to these Bylaws shall be proposed and adopted in the following manner:

**9.1 Proposal.** Amendments to these Bylaws may be proposed either by a resolution approved by a majority of the whole Board of Directors, or by a petition to the Board, signed by the voting representatives of at least twenty-five percent (25%) of the voting interests of the Club. Once so proposed, the amendments shall be submitted to a vote of the members at a meeting no later than the next annual meeting for which notice can still properly be given.

**9.2 Vote Required.** Except as otherwise provided by law, or by specific provision of the governing documents, these Bylaws may be amended by concurrence of at least two-thirds (2/3) of the voting interests present and voting in person or by proxy at any annual or special meeting, provided that the text of any proposed amendment has been given to the members with notice of the meeting.

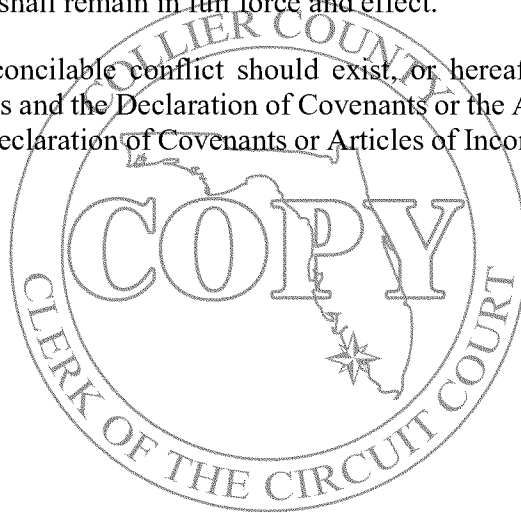
**9.3 Certificate; Recording.** A copy of each approved amendment shall be attached to a certificate reciting that the amendment was duly adopted, which certificate shall be executed by the President or Vice President of the Club with the formalities of a deed. The amendment shall be effective when the certificate and copy of the amendment are recorded in the Public Records of the County. The certificate must identify the book and page of the Public Records where the Declaration of Covenants was originally recorded.

**10. MISCELLANEOUS.**

**10.1 Gender; Number.** Whenever the masculine or singular form of a pronoun is used in these Bylaws, it shall be construed to mean the masculine, feminine or neuter; singular or plural, as the context requires.

**10.2 Severability.** Should any portion hereof be void or become unenforceable, the remaining provisions of the instrument shall remain in full force and effect.

**10.3 Conflict.** If any irreconcilable conflict should exist, or hereafter arise, with respect to the interpretation of these Bylaws and the Declaration of Covenants or the Articles of Incorporation of the Club, the provisions of the Declaration of Covenants or Articles of Incorporation shall prevail over the provisions of these Bylaws.



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Updated 3/6/2019





**SOUTH FLORIDA WATER MANAGEMENT DISTRICT  
ENVIRONMENTAL RESOURCE  
PERMIT MODIFICATION NO. 11-02234-P  
DATE ISSUED: APRIL 10, 2008**

**PERMITTEE:** CENTEX HOMES  
(HERITAGE BAY)  
5801 PELICAN BAY BLVD STE 600,  
NAPLES, FL 34108

LENNAR HOMES L.L.C.  
(HERITAGE BAY)  
4415 METRO PARKWAY, SUITE 216,  
FORT MYERS, FL 33916

**ORIGINAL PERMIT ISSUED:** AUGUST 13, 2003

**ORIGINAL PROJECT DESCRIPTION:** AN ERP TO AUTHORIZE CONCEPTUAL APPROVAL OF A 2562.27 ACRE MIXED RESIDENTIAL AND COMMERCIAL DEVELOPMENT WITH GOLF COURSES AND THE CONSTRUCTION AND OPERATION OF A SWM SYSTEM TO SERVE 2367.4 ACRES OF THE DEVELOPMENT. THE SYSTEM DISCHARGES TO THE COCOHATCHEE CANAL.

**APPROVED MODIFICATION :** CONSTRUCTION AND OPERATION OF A SURFACE WATER MANAGEMENT SYSTEM SERVING A 2,562.20-ACRE GOLF COURSE, RESIDENTIAL AND COMMERCIAL DEVELOPMENT KNOWN AS HERITAGE BAY, WITH DISCHARGE INTO COCOHATCHEE RIVER CANAL.

**PROJECT LOCATION:** COLLIER COUNTY, SECTION 13,14,23,24 TWP 48S RGE 26E

**PERMIT DURATION:** See Special Condition No.1. See attached Rule 40E-4.321, Florida Administrative Code.

This Permit Modification is approved pursuant to Application No. 070806-9, dated March 7, 2007. Permittee agrees to hold and save the South Florida Water Management District and its successors harmless from any and all damages, claims or liabilities which may arise by reason of the construction, operation, maintenance or use of any activities authorized by this Permit. This Permit is issued under the provisions of Chapter 373, Part IV Florida Statutes(F.S.), and the Operating Agreement Concerning Regulation Under Part IV, Chapter 373 F.S. between South Florida Water Management District and the Department of Environmental Protection. Issuance of this Permit constitutes certification of compliance with state water quality standards where necessary pursuant to Section 401, Public Law 92-500, 33 USC Section 1341, unless this Permit is issued pursuant to the net improvement provisions of Subsections 373.414(1)(b), F.S., or as otherwise stated herein.

This Permit Modification may be revoked, suspended, or modified at any time pursuant to the appropriate provisions of Chapter 373, F.S., and Sections 40E-4.351(1), (2), and (4), Florida Administrative Code (F.A.C.). This Permit Modification may be transferred pursuant to the appropriate provisions of Chapter 373, F.S., and Sections 40E-1.6107(1) and (2), and 40E-4.351(1), (2), and (4), F.A.C.

All specifications and special and limiting/general conditions attendant to the original Permit, unless specifically rescinded by this or previous modifications, remain in effect.

This Permit Modification shall be subject to the Environmental Resource Permit set forth in Rule 40E-4.381, F.A.C., unless waived or modified by the Governing Board. The Application, and Environmental Resource Permit Staff Review Summary of the Application, including all conditions, and all plans and specifications incorporated by reference, are a part of this Permit Modification. All activities authorized by this Permit Modification shall be implemented as set forth in the plans, specifications, and performance criteria as set forth and incorporated in the Environmental Resource Permit Staff Review Summary. Within 30 days after completion of construction of the permitting activity, the Permittee shall submit a written statement of completion and certification by a registered professional engineer or other appropriate individual, pursuant to the appropriate provisions of Chapter 373, F.S. and Sections 40E-4.361 and 40E-4.381, F.A.C.

In the event the property is sold or otherwise conveyed, the Permittee will remain liable for compliance with this Permit until transfer is approved by the District pursuant to Rule 40E-1.6107, F.A.C.

**SPECIAL AND GENERAL CONDITIONS ARE AS FOLLOWS:**  
SEE PAGES 2 - 3 OF 6 (19 SPECIAL CONDITIONS).  
SEE PAGES 4 - 6 OF 6 (19 GENERAL CONDITIONS).

**PERMIT MODIFICATION APPROVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT**

ON \_\_\_\_\_ ORIGINAL SIGNED BY:  
BY \_\_\_\_\_ ELIZABETH VEGUILLA  
DEPUTY CLERK

**SPECIAL CONDITIONS**

1. The construction phase of this permit shall expire on April 10, 2013.
2. Operation of the surface water management system shall be the responsibility of Heritage Bay Umbrella Association, Inc. Within one year of permit issuance or concurrent with the engineering certification of construction completion, whichever comes first, the permittee shall submit a copy of the recorded deed restrictions (or declaration of condominium, if applicable), a copy of the filed articles of incorporation, and a copy of the certificate of incorporation for the association.
3. Discharge Facilities: Through previously permitted water management facilities.
4. Inlet Facilities (proposed for modifications under this application):
  - Structure W1W4
    - 1 - 9' wide sharp crested weir with crest at elev. 15.90' NGVD 29.
    - 776 LF of 48" dia. REINFORCED CONCRETE PIPE culvert.
    - Receiving body: Onsite Wetland Number 4 (W4)
  - Structure W1L30
    - 1 - 52' wide sharp crested weir with crest at elev. 15.90' NGVD 29.
    - 4 - 540 LF of 48" dia. REINFORCED CONCRETE PIPE culvert.
    - Receiving body: Onsite Lake Number 30 (Basin 6)
  - Structure W2L30
    - 1 - 7' wide sharp crested weir with crest at elev. 15.90' NGVD 29.
    - 2 - 324 LF of 48" dia. REINFORCED CONCRETE PIPE culvert.
    - Receiving body: Onsite Lake Number 30 (Basin 6)
5. The permittee shall be responsible for the correction of any erosion, shoaling or water quality problems that result from the construction or operation of the surface water management system.
6. Measures shall be taken during construction to insure that sedimentation and/or turbidity violations do not occur in the receiving water.
7. The District reserves the right to require that additional water quality treatment methods be incorporated into the drainage system if such measures are shown to be necessary.
8. Lake side slopes shall be no steeper than 4:1 (horizontal:vertical) to a depth of two feet below the control elevation. Side slopes shall be nurtured or planted from 2 feet below to 1 foot above control elevation to insure vegetative growth, unless shown on the plans.
9. Facilities other than those stated herein shall not be constructed without an approved modification of this permit.
10. A stable, permanent and accessible elevation reference shall be established on or within one hundred (100) feet of all permitted discharge structures no later than the submission of the certification report. The location of the elevation reference must be noted on or with the certification report.
11. The permittee shall provide routine maintenance of all of the components of the surface water management system in order to remove all trapped sediments/debris. All materials shall be properly disposed of as required by law. Failure to properly maintain the system may result in adverse flooding conditions.

PERMIT NO: 11-02234-P

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12. This permit is issued based on the applicant's submitted information which reasonably demonstrates that adverse water resource related impacts will not be caused by the completed permit activity. Should any adverse impacts caused by the completed surface water management system occur, the District will require the permittee to provide appropriate mitigation to the District or other impacted party. The District will require the permittee to modify the surface water management system, if necessary, to eliminate the cause of the adverse impacts.
13. The permittee acknowledges, that pursuant to Rule 40E-4.101(2), F.A.C., a notice of Environmental Resource or Surface Water Management Permit may be recorded in the county public records. Pursuant to the specific language of the rule, this notice shall not be considered an encumbrance upon the property.
14. Minimum building floor elevation: No changes to the previously permitted minimum finished floor elevations. (Permit Number 11-02234-P/ Applications Number 040212-21 and 041201-9).
15. Minimum road crown elevation: No changes to the previously permitted minimum road crown elevations (Permit Number 11-02234-P/ Applications Number 040212-21 and 041201-9).
16. Minimum parking lot elevation: No changes to the previously permitted minimum parking lot elevations (Permit Number 11-02234-P/ Applications Number 040212-21 and 041201-9).
17. The exhibits and special conditions in this permit apply only to this application. They do not supersede or delete any requirements for other applications covered in Permit No. 11-02234-P unless otherwise specified herein.
18. The District reserves the right to require remedial measures to be taken by the permittee if monitoring or other information demonstrates that adverse impacts to onsite or offsite wetlands, upland conservation areas or buffers, or other surface waters have occurred due to project related activities.
19. If monitoring reports or other information show the preserved wetlands have been negatively affected by the permitted development in a manner that is irreversible (such as impounding the wetland and drowning the existing vegetation or a reduction in the hydroperiod resulting in the transition of wetlands into upland/transitional habitat), the permittee shall be required to submit a remediation plan within 30 days of notification by the District's Environmental Resource Compliance staff of such conditions. The remediation plan may include onsite or offsite mitigation as necessary to address any deficiencies.

**GENERAL CONDITIONS**

1. All activities authorized by this permit shall be implemented as set forth in the plans, specifications and performance criteria as approved by this permit. Any deviation from the permitted activity and the conditions for undertaking that activity shall constitute a violation of this permit and Part IV, Chapter 373, F.S.
2. This permit or a copy thereof, complete with all conditions, attachments, exhibits, and modifications shall be kept at the work site of the permitted activity. The complete permit shall be available for review at the work site upon request by District staff. The permittee shall require the contractor to review the complete permit prior to commencement of the activity authorized by this permit.
3. Activities approved by this permit shall be conducted in a manner which does not cause violations of State water quality standards. The permittee shall implement best management practices for erosion and pollution control to prevent violation of State water quality standards. Temporary erosion control shall be implemented prior to and during construction, and permanent control measures shall be completed within 7 days of any construction activity. Turbidity barriers shall be installed and maintained at all locations where the possibility of transferring suspended solids into the receiving waterbody exists due to the permitted work. Turbidity barriers shall remain in place at all locations until construction is completed and soils are stabilized and vegetation has been established. All practices shall be in accordance with the guidelines and specifications described in Chapter 6 of the Florida Land Development Manual; A Guide to Sound Land and Water Management (Department of Environmental Regulation, 1988), incorporated by reference in Rule 40E-4.091, F.A.C. unless a project-specific erosion and sediment control plan is approved as part of the permit. Thereafter the permittee shall be responsible for the removal of the barriers. The permittee shall correct any erosion or shoaling that causes adverse impacts to the water resources.
4. The permittee shall notify the District of the anticipated construction start date within 30 days of the date that this permit is issued. At least 48 hours prior to commencement of activity authorized by this permit, the permittee shall submit to the District an Environmental Resource Permit Construction Commencement Notice Form Number 0960 indicating the actual start date and the expected construction completion date.
5. When the duration of construction will exceed one year, the permittee shall submit construction status reports to the District on an annual basis utilizing an annual status report form. Status report forms shall be submitted the following June of each year.
6. Within 30 days after completion of construction of the permitted activity, the permittee shall submit a written statement of completion and certification by a professional engineer or other individual authorized by law, utilizing the supplied Environmental Resource/Surface Water Management Permit Construction Completion/Certification Form Number 0881A, or Environmental Resource/Surface Water Management Permit Construction Completion Certification - For Projects Permitted prior to October 3, 1995 Form No. 0881B, incorporated by reference in Rule 40E-1.659, F.A.C. The statement of completion and certification shall be based on onsite observation of construction or review of as-built drawings for the purpose of determining if the work was completed in compliance with permitted plans and specifications. This submittal shall serve to notify the District that the system is ready for inspection. Additionally, if deviation from the approved drawings are discovered during the certification process, the certification must be accompanied by a copy of the approved permit drawings with deviations noted. Both the original and revised specifications must be clearly shown. The plans must be clearly labeled as "as-built" or "record" drawings. All surveyed dimensions and elevations shall be certified by a registered surveyor.
7. The operation phase of this permit shall not become effective: until the permittee has complied with the requirements of condition (6) above, and submitted a request for conversion of Environmental Resource Permit from Construction Phase to Operation Phase, Form No. 0920; the District determines the system to be in compliance with the permitted plans and specifications; and the entity approved by the District in accordance with Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit Applications within the South Florida Water Management District, accepts responsibility for operation and maintenance of the system. The permit shall not be transferred to such approved operation and maintenance entity until the operation phase of the permit becomes effective. Following inspection and approval of the permitted system by the District, the permittee shall initiate transfer of the permit to the approved responsible operating entity if different from the permittee. Until the permit is transferred pursuant to Section 40E-1.6107, F.A.C., the permittee

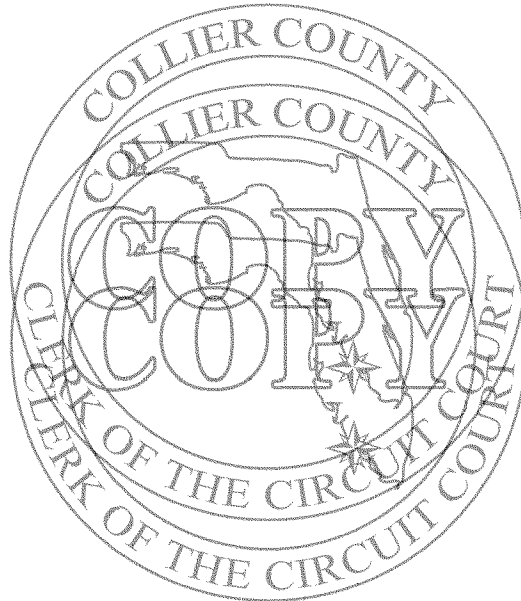
shall be liable for compliance with the terms of the permit.

8. Each phase or independent portion of the permitted system must be completed in accordance with the permitted plans and permit conditions prior to the initiation of the permitted use of site infrastructure located within the area served by that portion or phase of the system. Each phase or independent portion of the system must be completed in accordance with the permitted plans and permit conditions prior to transfer of responsibility for operation and maintenance of the phase or portion of the system to a local government or other responsible entity.
9. For those systems that will be operated or maintained by an entity that will require an easement or deed restriction in order to enable that entity to operate or maintain the system in conformance with this permit, such easement or deed restriction must be recorded in the public records and submitted to the District along with any other final operation and maintenance documents required by Sections 9.0 and 10.0 of the Basis of Review for Environmental Resource Permit applications within the South Florida Water Management District, prior to lot or units sales or prior to the completion of the system, whichever comes first. Other documents concerning the establishment and authority of the operating entity must be filed with the Secretary of State, county or municipal entities. Final operation and maintenance documents must be received by the District when maintenance and operation of the system is accepted by the local government entity. Failure to submit the appropriate final documents will result in the permittee remaining liable for carrying out maintenance and operation of the permitted system and any other permit conditions.
10. Should any other regulatory agency require changes to the permitted system, the permittee shall notify the District in writing of the changes prior to implementation so that a determination can be made whether a permit modification is required.
11. This permit does not eliminate the necessity to obtain any required federal, state, local and special district authorizations prior to the start of any activity approved by this permit. This permit does not convey to the permittee or create in the permittee any property right, or any interest in real property, nor does it authorize any entrance upon or activities on property which is not owned or controlled by the permittee, or convey any rights or privileges other than those specified in the permit and Chapter 40E-4 or Chapter 40E-40, F.A.C..
12. The permittee is hereby advised that Section 253.77, F.S. states that a person may not commence any excavation, construction, or other activity involving the use of sovereign or other lands of the State, the title to which is vested in the Board of Trustees of the Internal Improvement Trust Fund without obtaining the required lease, license, easement, or other form of consent authorizing the proposed use. Therefore, the permittee is responsible for obtaining any necessary authorizations from the Board of Trustees prior to commencing activity on sovereignty lands or other state-owned lands.
13. The permittee must obtain a Water Use permit prior to construction dewatering, unless the work qualifies for a general permit pursuant to Subsection 40E-20.302(3), F.A.C., also known as the "No Notice" Rule.
14. The permittee shall hold and save the District harmless from any and all damages, claims, or liabilities which may arise by reason of the construction, alteration, operation, maintenance, removal, abandonment or use of any system authorized by the permit.
15. Any delineation of the extent of a wetland or other surface water submitted as part of the permit application, including plans or other supporting documentation, shall not be considered binding, unless a specific condition of this permit or a formal determination under Section 373.421(2), F.S., provides otherwise.
16. The permittee shall notify the District in writing within 30 days of any sale, conveyance, or other transfer of ownership or control of a permitted system or the real property on which the permitted system is located. All transfers of ownership or transfers of a permit are subject to the requirements of Rules 40E-1.6105 and 40E-1.6107, F.A.C.. The permittee transferring the permit shall remain liable for corrective actions that may be required as a result of any violations prior to the sale, conveyance or other transfer of the system.
17. Upon reasonable notice to the permittee, District authorized staff with proper identification shall have permission to enter, inspect, sample and test the system to insure conformity with the plans and specifications approved by the permit.

OR: 4355 PG: 1918

PERMIT NO: 11-02234-P  
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18. If historical or archaeological artifacts are discovered at any time on the project site, the permittee shall immediately notify the appropriate District service center.
19. The permittee shall immediately notify the District in writing of any previously submitted information that is later discovered to be inaccurate.



## ENVIRONMENTAL RESOURCE PERMITS CHAPTER 40E-4 (01/07)

## 40E-4.321 Duration of Permits.

(1) Unless revoked or otherwise modified the duration of an environmental resource permit issued under this chapter or Chapter 40E-40, F.A.C., is as follows:

(a) For a conceptual approval, two years from the date of issuance or the date specified as a condition of the permit, unless within that period an application for an individual or standard general permit is filed for any portion of the project. If an application for an environmental resource permit is filed, then the conceptual approval remains valid until final action is taken on the environmental resource permit application. If the application is granted, then the conceptual approval is valid for an additional two years from the date of issuance of the permit. Conceptual approvals which have no individual or standard general environmental resource permit applications filed for a period of two years shall expire automatically at the end of the two year period.

(b) For a conceptual approval filed concurrently with a development of regional impact (DRI) application for development approval (ADA) and a local government comprehensive plan amendment, the duration of the conceptual approval shall be two years from whichever one of the following occurs at the latest date:

1. The effective date of the local government's comprehensive plan amendment,
2. The effective date of the local government development order,
3. The date on which the District issues the conceptual approval, or 4. The date on which the District issues a final order pertaining to the resolution of any Section 120.57, F.S., administrative proceeding or other legal appeals.

(c) For an individual or standard general environmental resource permit, the construction phase authorizing construction, removal, alteration or abandonment of a system shall expire five years from the date of issuance or such amount of time as made a condition of the permit.

(d) For an individual or standard general environmental resource permit, the operational phase of the permit is perpetual for operation and maintenance.

(e) For a noticed general permit issued pursuant to Chapter 40E-400, F.A.C., five years from the date the notice of intent to use the permit is provided to the District.

(2)(a) Unless prescribed by special permit condition, permits expire automatically according to the timeframes indicated in this rule. If application for extension is made by electronic mail at the District's e-Permitting website or in writing pursuant to subsection (3), the permit shall remain in full force and effect until:

1. The Governing Board takes action on an application for extension of an individual permit, or
2. Staff takes action on an application for extension of a standard general permit.

(b) Installation of the project outfall structure shall not constitute a vesting of the permit.  
 (3) The permit extension shall be issued provided that a permittee files a written request with the District showing good cause prior to the expiration of the permit. For the purpose of this rule, good cause shall mean a set of extenuating circumstances outside of the control of the permittee. Requests for extensions, which shall include documentation of the extenuating circumstances and how they have delayed this project, will not be accepted more than 180 days prior to the expiration date.

(4) Substantial modifications to Conceptual Approvals will extend the duration of the Conceptual Approval for two years from the date of issuance of the modification. For the purposes of this section, the term "substantial modification" shall mean a modification which is reasonably expected to lead to substantially different water resource or environmental impacts which require a detailed review.

(5) Substantial modifications to individual or standard general environmental resource permits issued pursuant to a permit application extend the duration of the permit for three years from the date of issuance of the modification. Individual or standard general environmental resource permit modifications do not extend the duration of a conceptual approval.

(6) Permit modifications issued pursuant to paragraph 40E-4.331(2)(b), F.A.C. (letter modifications) do not extend the duration of the permit.

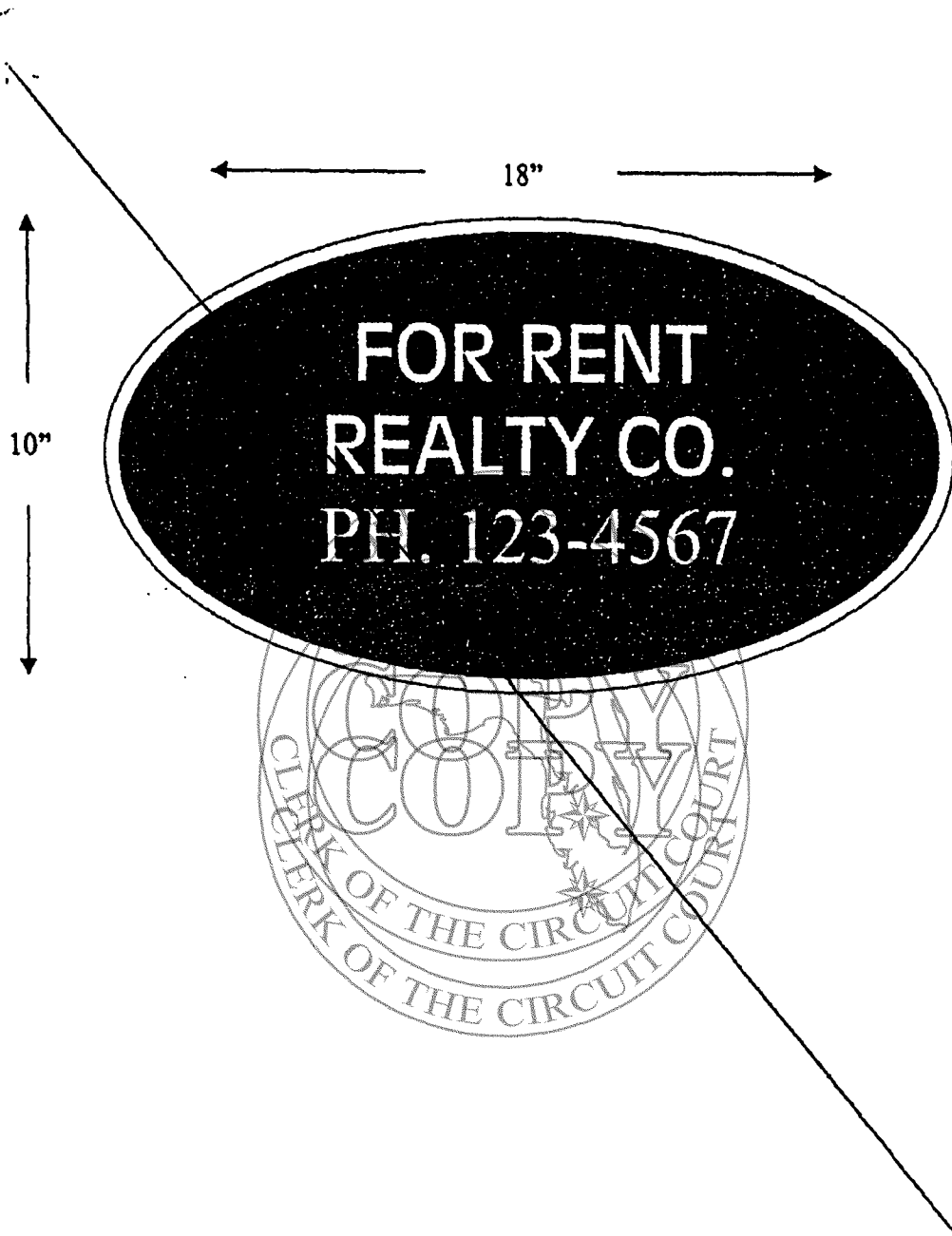
(7) Failure to complete construction or alteration of the surface water management system and obtain operation phase approval from the District within the permit duration shall require a new permit authorization in order to continue construction unless a permit extension is granted.

*Specific Authority 373.044, 373.113, 668.003, 668.004, 668.50 FS. Law Implemented 373.413, 373.416, 373.419, 373.426, 668.003, 668.004, 668.50 FS. History-New 9-3-81, Amended 1-31-82, 12-1-82, Formerly 16K-4.07(4), Amended 7-1-86, 4-20-94, 10-3-95, 5-28-00, 10-1-06.*



~~10" x 18" Wood or Metal sign (Dark Green Background w/White Letters and Border) mounted to metal step stake~~





~~10" x 18" Wood or Metal sign (Dark Green Background w/White Letters and Border)~~

Prepared by and return to:

Christopher N. Davies, Esquire  
Dentons Cohen & Grigsby P.C.  
Mercato — Suite 6200  
9110 Strada Place  
Naples, FL 34108-2938

**CERTIFICATE OF AMENDMENT**

**THE UNDERSIGNED**, being the duly elected and acting President of Heritage Bay Golf & Country Club, Inc., a Florida corporation not for profit, hereby certifies that at a duly called Annual Meeting of the members held on March 24, 2020, where a quorum was present, after due notice, the resolution set forth below was approved by the votes indicated for the purpose of amending of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, as recorded in the Official Records Book 5639, Page 0279, *et seq.*, Public Records of Collier County, Florida, by amending Section 1.18, Section 1.42, Section 1.43, Section 4.0, Section 4.1(A), (B) and (C), Section 4.1.1, Section 4.2, Section 4.4, Section 4.5, Section 4.7, Section 6.4 and Section 11.4 of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, and Section 2.1, Section 2.2, Section 2.5, Section 2.6, Section 3.2, Section 3.3, Section 3.4, Section 3.5, Section 3.7, Section 3.14, Section 8.2(B) and Section 9.1 of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc.

- 1. The following resolution was approved and adopted by the affirmative vote of at least two-thirds (2/3) of the voting interests then present and voting in person or by proxy.

**RESOLVED:** That Definitions 1.18 of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, be and are hereby amended and the amendment is adopted in the form attached hereto and made a part hereof.

- 2. The following resolutions were approved and adopted by the affirmative vote of at least two-thirds (2/3) of the voting interests then present and voting in person or by proxy.

**RESOLVED:** That Section 1.42, Section 1.43, Section 4.0, Section 4.1(A), (B) and (C), Section 4.1.1, Section 4.2, Section 4.4, Section 4.5, Section 4.7, Section 6.4 and Section 11.4 of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, be and are hereby amended and the amendment is adopted in the form attached hereto and made a part hereof.

- 3. The following resolutions were approved and adopted by the affirmative vote of at least two-thirds (2/3) of the voting interests then present and voting in person or by proxy.

**RESOLVED:** That Section 2.1, Section 2.2, Section 2.5, Section 2.6, Section 3.2, Section 3.3, Section 3.4, Section 3.5, Section 3.7, Section 3.14, Section 8.2(B) and Section 9.1 of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., be and are hereby amended and the amendment is adopted in the form attached hereto and made a part hereof.

**HERITAGE BAY GOLF & COUNTRY CLUB, INC.**

Stephanie L. McIntosh  
Witness Signature

By: Michael Schmidt  
Michael Schmidt, Vice President

Print Name: Stephanie L. McIntosh

Kathryn Greiman  
Witness Signature

Print Name: Kathryn Greiman

STATE OF FLORIDA )  
 ) ss  
COUNTY OF COLLIER )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this 15 day of April, 2020, by Michael Schmidt, Vice President of Heritage Bay Golf & Country Club, Inc., a Florida corporation not for profit, on behalf of the corporation. He is  personally known to me or  has produced \_\_\_\_\_ as identification.



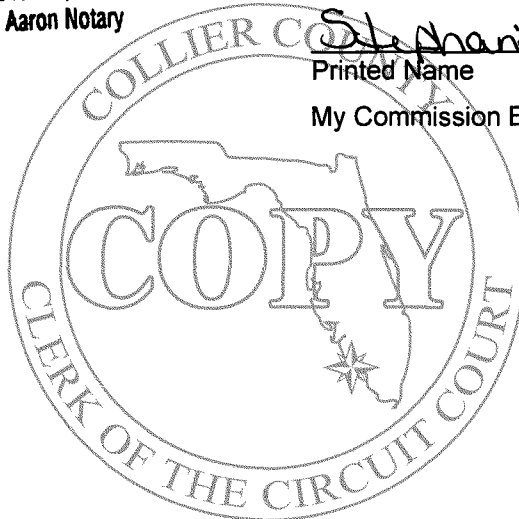
Stephanie L. McIntosh  
Commission # GG042491  
Expires: October 26, 2020  
Bonded thru Aaron Notary

(SEAL)

*Stephanie L. McIntosh*  
Notary Public

*Stephanie L. McIntosh*  
Printed Name

My Commission Expires: 10-26-20



3120666.v1

**AMENDMENT TO SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HERITAGE BAY GOLF & COUNTRY CLUB**

NOTE: New language is underlined; language being deleted is shown in ~~stricken~~ type.

**Section 1.18** of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be amended as follows:

**1.18** **“Family”** as referred to in Declaration Sections 2, 3, 5, 7, and 10, means one natural person or two or more natural persons each of whom are related to each other by blood, marriage, or adoption and who customarily reside and live together and otherwise hold themselves out as a single housekeeping unit or not more than two natural persons who are not related to each other by blood, marriage or adoption, and who customarily reside and live together, and otherwise hold themselves out as a single housekeeping unit. The decision as to whether two persons reside and constitute a qualifying family unit shall be a matter for the Board of Directors in their sole and unbridled discretion. ~~Once designated and accepted by the Board as a qualifying family unit, no change in persons so constituting the qualifying family unit may be made except for one time in any calendar year and no more than three times in any constituent partner's lifetime, but in all events such change in partner shall be subject to the Board's approval in its sole and unbridled discretion. Further, the biological or adopted children of only one person shall be entitled to golf privileges if they meet all of the following conditions: (a) said child or children are age 21 or less; and (b) such child or children are not married or co-habiting with any third party; and (c) said children do not have custodial children of their own, (i.e., grandchildren of the member); and (d) said children reside with the owner on a permanent basis, or in the case of college or graduate students, at such times as the student is not enrolled in a college or university. If a Living Unit is owned by two or more persons who are not a “family” and described above, or is owned by an entity which is not a natural person, the owner shall be required to select and designate one (1) family as defined above to utilize the golf membership. The Club may restrict the frequency of changes in such designation when there is no change in ownership of the Living Unit.~~

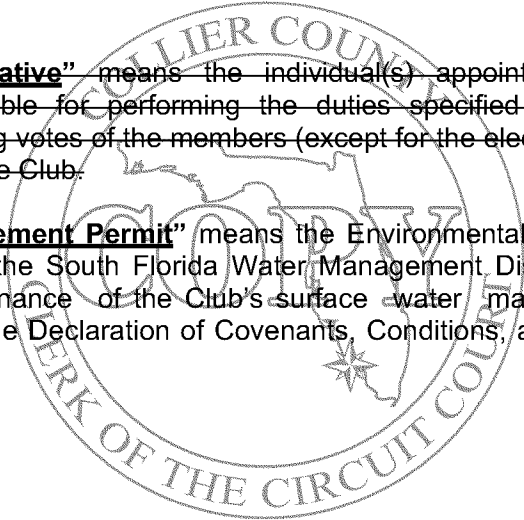
**AMENDMENT TO SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HERITAGE BAY GOLF & COUNTRY CLUB**

NOTE: New language is underlined; language being deleted is shown in ~~stricken~~ type.

**Sections 1.42 and 1.43** of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be amended as follows:

~~1.42~~ **“Voting Representative”** means the individual(s) appointed by each Neighborhood Association to be responsible for performing the duties specified within the Club Governing Documents, including casting votes of the members (except for the election of Directors) pursuant to Section 2 of the Bylaws of the Club.

~~1.43~~**1.42** **“Water Management Permit”** means the Environmental Resource Protection Permit No. 11-02234-P issued by the South Florida Water Management District to Heritage Bay, which permit includes the maintenance of the Club’s surface water management system, and is recorded as Exhibit “E” to the Declaration of Covenants, Conditions, and Restrictions for Heritage Bay.

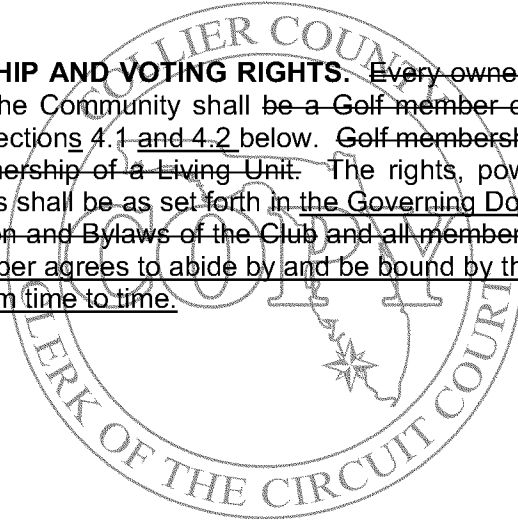


**AMENDMENT TO SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HERITAGE BAY GOLF & COUNTRY CLUB**

NOTE: New language is underlined; language being deleted is shown in ~~stricken~~ type.

**RESOLVED:** Section 4.0 of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be amended as follows:

**4.0 CLUB MEMBERSHIP AND VOTING RIGHTS.** ~~Every owner~~Owners of record legal title to a Living Unit within the Community shall ~~be a Golf member of the~~ have Club Membership rights as further defined in Sections 4.1 and 4.2 below. ~~Golf membership is appurtenant to, and may not be separated from, ownership of a Living Unit. The rights, powers, duties and privileges of Owners and Club Members shall be as set forth in the Governing Documents.~~ this Declaration, and in the Articles of Incorporation and Bylaws of the Club and all members agree to comply with same. Every Owner and Club Member agrees to abide by and be bound by the provisions of the Governing Documents, as amended from time to time.



**AMENDMENT TO SECOND AMENDED AND RESTATED  
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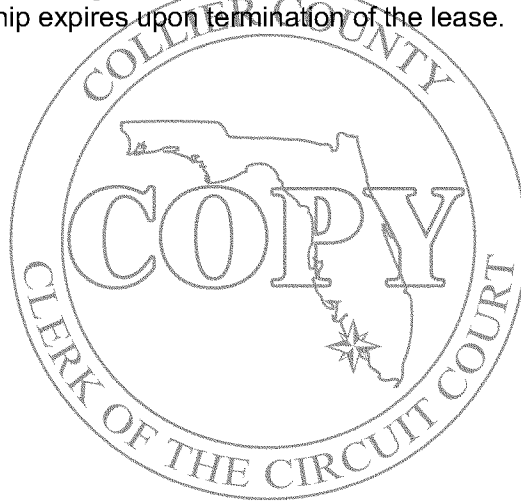
**Section 4.1(A), (B) and (C)** of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be amended as follows:

**4.1 Classes of Membership.** The Club has one (1) class of voting membership, and two (2) classes of non-voting membership, as follows:

**(A) Golf Club Membership (Voting).** ~~Every Owner of a Living Unit shall be a Golf member and Golf membership has one (1) Club Membership. Club Membership is an appurtenance appurtenant to and may not be separated from ownership of a the Living Unit. Golf members shall be all owners of Living Units within the Community. Golf members have Full rights of use in the Common Areas and facilities amenities, including full golfing privileges are subject to the limitations in this Declaration, including Section 4.2 below, and in the Bylaws, including Section 2.6. The number of Living Units and Club Memberships is 1250. The Owners of each Living Unit have one (1) indivisible vote in all matters upon which members are entitled to vote. Pursuant to Section 2.1 of the Bylaws, if a Living Unit is owned by one (1) natural person, the right to vote on Club related matters shall be established by the record title. If a Living Unit is owned jointly by two (2) or more natural persons, that Living Unit's vote on all Club related matters may be cast by any one (1) of the record owners. If two (2) or more Owners do not agree among themselves how their one (1) vote shall be cast on any issue, that vote shall not be counted for any purpose. Except for temporary delegations as provided in Section 4.4 below, a Club Membership shall not be assignable and/or transferable by any method other than the sale, lease or conveyance of record legal title to the Living Unit to which it is appurtenant. Upon sale or other transfer of ownership of a Living Unit to which a membership is appurtenant, the transferor shall be deemed to have automatically assigned and transferred the Club Membership and its appurtenant voting privileges with his the property. A member's The rights to use the Club Common Areas and amenities, including the golf course and other Club recreation facilities shall be limited as set forth in this Declaration and in the Bylaws the Governing Documents. Any attempt to separate the Club Membership and its appurtenant voting privileges from the interest in real property upon which it is based shall be null and void.~~

**(B)** ~~Interim~~ Outside Membership (Non-Voting). The Board of Directors shall have the right, but not the obligation, to limit the number of ~~interim members~~ Outside Memberships who are not owners or residents of the Community, and who shall have no voting rights. ~~Interim~~ Outside Mmemberships for golf are limited to One-Hundred Twenty-Five (125) members and ~~interim~~ Outside Mmemberships for tennis are limited to One Hundred (100) members. While in good standing, such members have the right to enjoy the social and recreational facilities appropriate to their membership class. To remain in good standing, such members shall be obligated to timely pay all charges and annual dues in the amount established by the Board of Directors and not be suspended. Such memberships shall be good for not more than one year at a time, and may, upon expiration of any one-year term, be terminated at the discretion of the Board of Directors, with or without cause.

**(C)** ~~Transfer Member~~Membership (Non-Voting). ~~Transfer Mmembers~~ shall have use rights to the Club Common Areas and golf course as described in Section 2.6 of the Bylaws, as a result of a Club Mmembership being temporarily transferred to a lessee occupying a unit under a Lease. However, voting rights attendant to Club Membership are not and shall not be transferred or delegated to the Transfer Member under the terms of a Lease. ~~Transfer Mmembership expires upon termination of the lease.~~



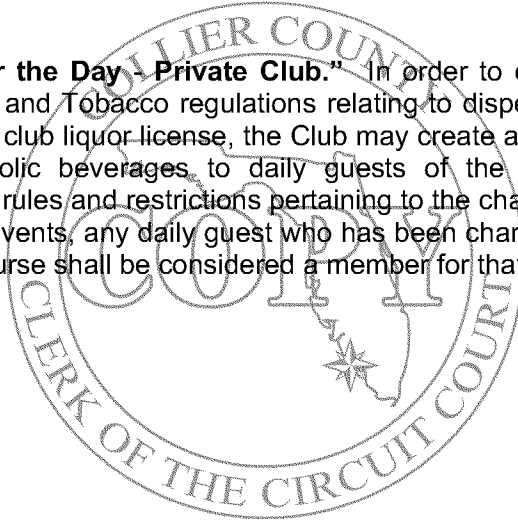


**AMENDMENT TO SECOND AMENDED AND RESTATED  
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OF  
HERITAGE BAY GOLF & COUNTRY CLUB**

NOTE: New language is underlined; language being deleted is shown in ~~stricken~~ type.

**Section 4.1.1** of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be amended as follows:

**4.1.1 “Member for the Day - Private Club.”** In order to comply with the Florida State Alcoholic Beverages and Tobacco regulations relating to dispensing of alcoholic beverages pursuant to a private club liquor license, the Club may create a daily membership to facilitate dispensing of alcoholic beverages to daily guests of the Club. The Board shall be empowered to adopt rules and restrictions pertaining to the charges paid to the Club for daily membership. In all events, any daily guest who has been charged for and paid a greens fee for use of the golf course shall be considered a member for that day.



**AMENDMENT TO SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
HERITAGE BAY GOLF & COUNTRY CLUB**

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**Sections 4.2** of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be amended as follows:

**4.2 Use of the Club Common Areas and Amenities Including the Golf Course.**

(A) ~~\_\_\_~~ The Owners of each Lot or Living Unit are entitled to ~~only one (1) Golf membership.~~ designate no more than two (2) persons as "Designated Club Members." ~~The designations of the Designated Club Members may be changed only once in any twelve (12) month period one calendar year.~~ The primary person designated must be an Owner of the Living Unit and is referred to as the "Designated Owner Member." ~~The second person designated is referred to as the "Designated Member."~~ The Designated Member must also be an Owner of the Living Unit or the Designated Member must reside together when at Heritage Bay with the Designated Owner Member. ~~Use rights in the Club Common Areas, including the golf course, for each such membership shall be limited to the persons comprising one (1) "family"~~ For purposes of this Section 4.2 only, "family" means one natural person or not more than two natural persons who are not related to each other by blood or adoption, who customarily reside and live together and otherwise hold themselves out as a single housekeeping unit. ~~The decision as to whether two persons reside and constitute a qualifying family unit shall be a matter for the Board of Directors in their sole and unbridled discretion. Once designated and accepted by the Board as a qualifying family unit, no change in persons so constituting the qualifying family unit may be made except for one time in any calendar year and no more than three times in any constituent partner's lifetime, but in all events such change in partner shall be subject to the Board's approval in its sole and unbridled discretion.~~

(B) ~~\_\_\_~~ Further, the ~~biological or adopted~~ custodial children or grandchildren of ~~only one~~ either of the Designated Club Members persons shall be entitled to utilize all golf privileges Club Common Areas and Amenities, including the golf course, if they meet all of the following conditions: (a) said child or children are age 21 or less; and (b) such child or children are not married or cohabitating with any third party; and (c) said child or children do not reside in the Living Unit with ~~have~~ custodial children of their own, (i.e., grandchildren of the member); and (d) said child or children reside with the one of the Designated Club Members in the Living Unit ~~owner~~ owner on a permanent basis, or in the case of college or graduate students, at such times as the student is not enrolled in a college or university.

(C) ~~\_\_\_~~ If a Living Unit is ~~owned by two or more persons who are not a "family" as described above,~~ or is owned by an entity which is not a natural person, the ~~owner~~ Owner(s)/trustees

of the entity shall be required to select and designate ~~one (1) family as defined above to utilize the golf membership.~~ the Designated Club Members to use Club Common Areas and Amenities, including the golf course as described in Section 4.2(A). The Club may restrict the frequency of changes in such designations when there is no change in ownership of the Living Unit.



**AMENDMENT TO SECOND AMENDED AND RESTATED  
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**Section 4.4** of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be amended as follows:

**4.4 Delegation of Use Rights In Club Common Areas and Amenities Including the Golf Course.**

(A) Guests initially accompanied by a Golf Designated Club Member under Section 4.2, shall have the right to use the Club Common Areas and amenities, including the golf course, but only to the extent provided in Section 2.6 of the Bylaws, or in the Club's Rules and Regulations, and subject to the conditions, limitations and restrictions as may be stated therein. A fee may be imposed for such usage delegation, not necessarily limited by or related to the cost of processing the delegation.

(B) Each Designated Owner Member of a Living Unit shall be financially and legally responsible to the Club for the actions and debts to the Club of any person to whom the a Designated Member has delegated his right to use the Common Areas and Amenities, including the Golf Course. The Designated Owner Member of a Living Unit may not delegate the obligation to pay Club assessments.

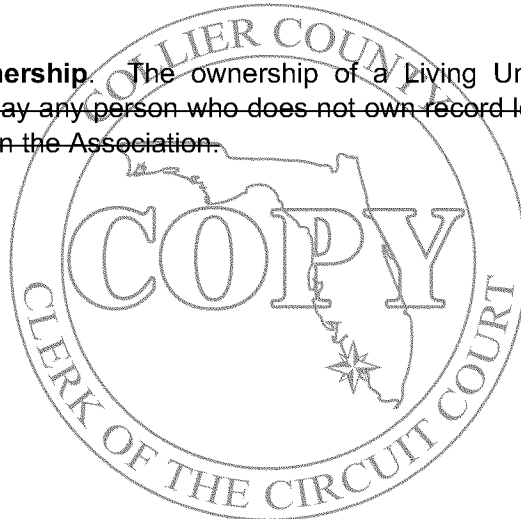
(C) Upon the lease of a Living Unit to which a membership is appurtenant, the lesser may retain the right to use the membership may be retained by the Owners, in which case the tenant(s) shall have no such membership rights. If a the membership is transferred to approved tenant(s), delegates his privileges to a tenant residing in his Living Unit, the member Owners(s) shall not be entitled to use of the Club Common Areas and Amenities, including the golf course, facilities, except as a guest of another Golf a Designated Club Member or a Transfer Member, during the period of the delegation.

**AMENDMENT TO SECOND AMENDED AND RESTATED  
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HERITAGE BAY GOLF & COUNTRY CLUB**

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**Section 4.5** of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be amended as follows:

**4.5 Separation of Ownership.** The ownership of a Living Unit may not be separated or separately conveyed. ~~nor may any person who does not own record legal title to at least one Living Unit, hold Golf membership in the Association.~~

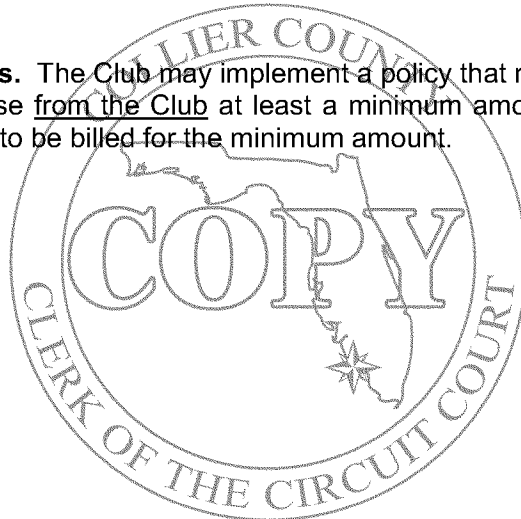


**AMENDMENT TO SECOND AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
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HERITAGE BAY GOLF & COUNTRY CLUB**

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**Section 4.7** of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be amended as follows:

**4.7 Minimum Purchases.** The Club may implement a policy that requires each Golf Designated Club Members to purchase from the Club at least a minimum amount of food or beverages per Living Unit ~~from the Club~~, or to be billed for the minimum amount.



**AMENDMENT TO THE SECOND AMENDED AND RESTATED  
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**Section 6.4** of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be deleted in its entirety and replaced with the following:

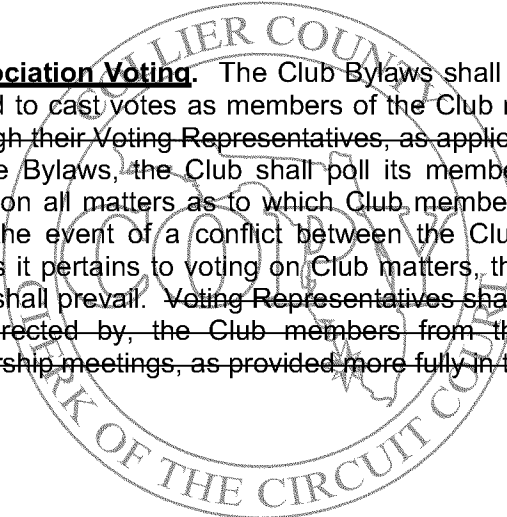
**6.4 Compliance and Enforcement.** ~~Any decisions of the ARC shall be enforced by the Neighborhood Association involved, as well as by the Club. If any ARC decision pertaining to a Neighborhood is not adhered to or prior written approval of the ARC has not been obtained by an Owner, the Neighborhood Association, or Club shall have the right to seek compliance and enforcement against the Owner. If any ARC decision pertaining to a Neighborhood is not adhered to or prior written approval of the ARC has not been obtained by the Neighborhood Association, the Club shall have the right to seek compliance and enforcement against the Neighborhood Association. Under either circumstance, enforcement may consist of any and all remedies available under Florida law, including but not limited to, the imposition of fines, not to exceed \$1,000.00 for Owners and \$5,000.00 for Neighborhood Associations, mandatory presuit mediation, and litigation to enjoin any violation or breach of the ARC decisions, Design Review Guidelines or provisions of the Governing Documents. Any legal action shall allow the prevailing party to be awarded reasonable attorney's fees including fees incurred in any appeals thereof, and costs.~~

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**Section 11.4** of the Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Heritage Bay Golf & Country Club, shall be amended as follows:

**11.4 Neighborhood Association Voting.** The Club Bylaws shall provide a procedure by which its members who are entitled to cast votes as members of the Club may cast their votes ~~and have their votes cast by and through their Voting Representatives, as applicable,~~ on Club matters. Except as otherwise provided in the Bylaws, the Club shall poll its members "at large" and collect and tabulate its members' votes on all matters as to which Club members are entitled to vote at Club membership meetings. In the event of a conflict between the Club Governing Documents and Neighborhood Documents as it pertains to voting on Club matters, the terms and conditions of the Club Governing Documents shall prevail. ~~Voting Representatives shall formally cast votes on behalf of, and as decided and directed by, the Club members from their respective Neighborhood Associations at Club membership meetings, as provided more fully in the Club Bylaws.~~



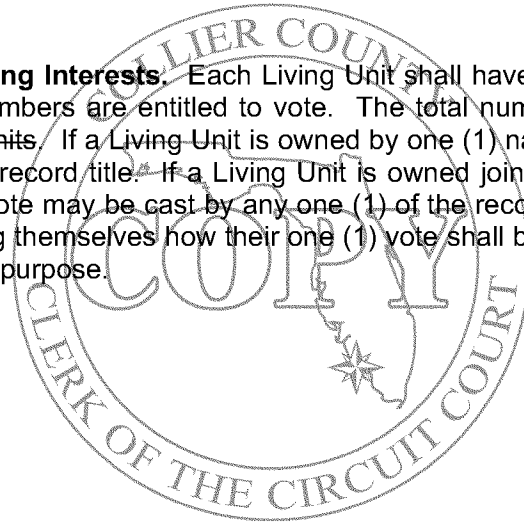


**AMENDMENT TO AMENDED AND RESTATED  
BYLAWS  
OF  
HERITAGE BAY GOLF & COUNTRY CLUB, INC.**

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A new **Section 2.1** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**2.1 Voting Rights; Voting Interests.** Each Living Unit shall have one (1) indivisible vote in all matters upon which the members are entitled to vote. The total number of voting interests of the Club shall be 1250 ~~Living Units~~. If a Living Unit is owned by one (1) natural person, the right to vote shall be established by the record title. ~~If a Living Unit is owned jointly by two (2) or more natural persons, that Living Unit's vote may be cast by any one (1) of the record owners. If two (2) or more Owners do not agree among themselves how their one (1) vote shall be cast on any issue, that vote shall not be counted for any purpose.~~



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A new **Section 2.2** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**Section 2.2 Method of Voting.** Except for the election of Directors, and except for actions taken by the Club members without a meeting (as specified in Section 3.12), all votes of the Club members pertaining to the Club shall be cast by ballot in person at the ~~(by a meeting-Ballot)~~, or by a limited proxy, ~~and~~ pursuant to the voting procedures set forth in this Section 2.2. Nothing herein shall require the use of secret ballots unless such use is required by law.

Each Club member resides in a Neighborhood and is a member of a Neighborhood Association, which is comprised of a certain number of Living Units. The number of total Living Units within each Neighborhood is set forth in Section 11.5 of the Declaration of Covenants. The Club is comprised of a total of 1250 Living Units within a total of 21 Neighborhoods.

~~Block voting by any Neighborhood Association via its Voting Representative at Club membership meetings on matters pertaining to the Club is prohibited. In the event of a conflict between these Club Bylaws and the Neighborhood Association governing documents (or any Neighborhood Association Board resolution or policy) on matters pertaining to voting on Club matters, the terms and conditions of these Club Bylaws shall prevail.~~

The Club will notify each Club member of a proposed Club matter which requires a vote of the Club members and which vote will be conducted at a Club membership meeting per the notification requirements contained within these Club Bylaws. The Club members will initially individually cast their votes regarding the proposed Club matter directly with the Club, in person (by meeting ballot) or by proxy, at a Club membership meeting ~~but an individual Club member's vote will be formally cast at the Club membership meeting by the Voting Representative from that member's Neighborhood Association. Voting Representatives are required to vote on a proposed Club matter as directed by the Club members of their respective Neighborhood Associations and pursuant to the voting procedure mandated in these Club Bylaws and each Voting Representative hereby covenants to do so.~~ The Club will tabulate the results of the votes cast by the Club members, in person (by meeting ballot) or by proxy, at the Club membership meeting. ~~Then, the total votes attributable to each Neighborhood Association will be calculated as follows: (1) The "total voting percentages" (to three decimal points, if necessary [ex. 52.354%]) of the votes actually cast by the Club members, in person (by meeting ballot) or by proxy, from a given Neighborhood Association both in favor of the proposed Club measure and against the proposed Club measure will be calculated. (2) The "total voting percentages" will then be multiplied by the total number of Living Units within that Neighborhood Association resulting in a "final tally" of "yea" votes and "nay" votes which (when added together) will equal the total number of Living Units within said Neighborhood Association. (3)~~

If the "final tally" is a fractional number (to three decimal points, if necessary), the Club will "round up" to the next whole number any "final tally" higher than ".499" and the Club will "round down" to the next whole number any "final tally" of ".499" or lower such that no Neighborhood Association will have more votes attributable to their Neighborhood Association than the number of Living Units within said Neighborhood Association and as set forth in Section 11.5 of the Declaration. The Voting Representative from each Neighborhood Association will then cast the votes of the Club members of such Neighborhood Association in accordance with the "final tally" of the "yea" votes and "nay" votes as set forth above. The following is an example as to how this voting percentage mechanism works:

In a Neighborhood Association with 252 Living Units (i.e. 252 potential votes on a Club measure), where a poll of that Neighborhood Association's members results in 87 "yeas" to a proposed Club measure and 81 "nays" to the same measure, with 84 votes not being cast, the "total voting percentages" (of the votes cast) is 51.786 percent in favor of the proposed Club measure and 48.214 percent opposed to the proposed Club measure. This 51.786 voting percentage in favor (i.e. the "yea" votes in this example) is then multiplied by 252 Living Units, resulting in a "final tally" of 130.500, or 131 "yea" votes (after rounding up). The corresponding 48.214 voting percentage attributable to the "nay" votes is likewise multiplied by 252 Living Units, resulting in a "final tally" of 121 "nay" votes (after rounding down). The Voting Representative of this Neighborhood Association will cast the 252 votes of the members of the Neighborhood Association as follows: 131 "yea" votes and 121 "nay" votes.

In the event all the possible votes attributable to the Club members within a given Neighborhood Association are cast, in person (by meeting ballot) or by proxy, on a proposed Club measure, the "total voting percentages" and "final tally" (referenced above) will not need to be calculated or utilized (since all the possible votes were cast). In this scenario, the Voting Representative of that Neighborhood Association will cast the votes of the Neighborhood Association as cast by the Club members from that Neighborhood Association.

In the event that no votes attributable to a given Neighborhood Association are cast by the Club members of that Neighborhood Association, no further calculations will be necessary and all the votes attributable to this Neighborhood Association will be considered "nay" votes (or votes opposed to the proposed Club measure). In this scenario, the Voting Representative of that Neighborhood Association will cast all the votes of the Club members of that Neighborhood Association as "nay" votes.

The above-described voting procedure shall be utilized to vote on a proposed Club matter at a Club membership meeting wherein a quorum, as specified by Section 3.3, has been attained.

In the event that two or more of the Neighborhood Associations merge into one corporate entity, the voting procedure mandated by these Club Bylaws shall still be utilized with the number of Living Units attributable to the surviving Neighborhood Association adjusted accordingly.

In the event a Voting Representative fails to attend a Club membership meeting, or fails to cast his or her Neighborhood Association's votes as required by the above-described voting procedure, or in the event a Neighborhood Association fails to appoint a Voting Representative, the Club Secretary, or, in the absence of the Club Secretary, another Club Officer shall serve as the Voting Representative for that Neighborhood Association and shall cast the votes of the Club members from that Neighborhood Association as decided and directed by each such Club member and pursuant to the voting procedure mandated in these Club Bylaws and such Club Officer hereby covenants to do so. Any votes cast by a Voting Representative contrary to the above-described voting procedure shall be null and void.

**AMENDMENT TO AMENDED AND RESTATED  
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HERITAGE BAY GOLF & COUNTRY CLUB, INC.**

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**Section 2.5** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**2.5 Rights and Privileges of Members.**

- (A) Every member shall have the right to:
- (1) Have his vote cast by his ~~voting representative~~ at the meetings of the members;
  - (2) Serve on the Board, if elected;
  - (3) Serve on committees; and
  - (4) Attend membership meetings.

Each member is encouraged to take an active interest in Club affairs.

(B) Every member in good standing shall have the privilege of using and enjoying the Common Areas, subject to the rules of the Club and the right of the Club to charge admission and other fees for the use of any facilities.

(C) A member is in good standing if he is current in the payment of all assessments and other financial obligations to the Club, and his membership is not suspended.

**AMENDMENT TO AMENDED AND RESTATED  
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**Section 2.6** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**2.6 Delegation of Rights to Use Club Common Areas and Amenities, Including the Golf Course.**

(A) In accordance with Section 4.4 of the Declaration, of Covenants, Conditions and Restrictions, a Designated Club Member may delegate his use privileges to use the Club Common Areas and Amenities, including the golf course ("Club Amenities") to: ~~(1) A~~ a reasonable number of guests if initially accompanied by either of the Designated Club Members. Guests shall be subject to payment of guest fees for use of any Club Amenities; ~~or (2)~~

(B) Also in accordance with Section 4.4(C) of the Declaration, the use privileges to the Club Amenities may be delegated to Residential approved tenants who reside in the Living Unit member's parcel. Said tenants are not subject to payment of guest fees for use of any Club Amenities, but are responsible for Transfer Membership Fees.

~~(B)(1)~~ In the case of approved residential tenants, of the member's parcel, the delegating member must give prior written notice must be given to the Club of any such delegation of use rights to the Club Amenities. The written notification shall state the name, age, permanent address, intended length of time the delegation will be effective, and such other information about each residential approved tenant as the Board shall require.

~~(C)(2)~~ A member who has delegated his Once use privileges have been transferred to approved tenants, and is not in residence in Heritage Bay Golf & Country Club, Owners may not use Club Common Areas Amenities, during the period of the delegation, except as a guest of another Designated Club Member or a Transfer Member. A member may not be the guest of his tenant.

~~(D)~~(C) Designated Owner Members shall be responsible for keeping the Club informed as to the identity and relationship of any persons who normally and/or permanently reside with the Designated Owner Member and intend to utilize the Club Common Areas Amenities.

~~(E)~~(D) The Board of Directors may limit the number of guests or the frequency or duration of any Designated Club Member's delegation of use rights, and may impose fees for the delegation of such rights of use of the facilities by renters or guests, which fees may be different from fees charged to members for their use.

~~(F)~~ — The delegation of membership is subject to the one (1) family limitation described in Section 4.2 of the Club Declaration.

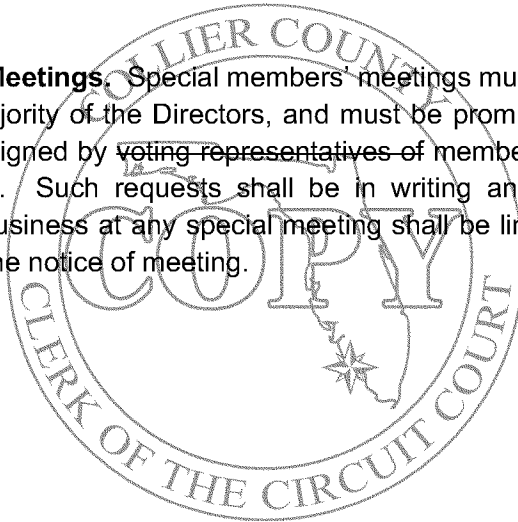


**AMENDMENT TO AMENDED AND RESTATED  
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HERITAGE BAY GOLF & COUNTRY CLUB, INC.**

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**Section 3.2** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**3.2 Special Members' Meetings.** Special members' meetings must be held whenever called for by the President or by a majority of the Directors, and must be promptly called by the Board upon receipt of a written request signed by ~~voting representatives of~~ members entitled to cast at least ten percent (10%) of the votes. Such requests shall be in writing and shall state the purpose or purposes of the meeting. Business at any special meeting shall be limited to the items specified in the request or contained in the notice of meeting.

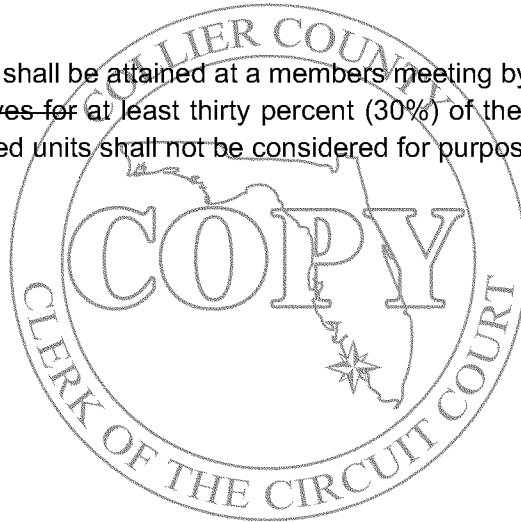


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**Section 3.3** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**3.3 Quorum.** A quorum shall be attained at a members meeting by the presence in person or by proxy of ~~voting representatives for~~ at least thirty percent (30%) of the total voting interests. Voting interests of Association owned units shall not be considered for purposes of a quorum or counted for any purpose.



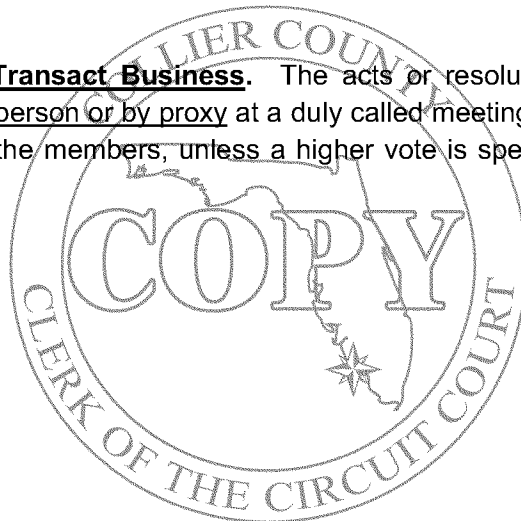


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**Section 3.4** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**3.4 Vote Required to Transact Business.** The acts or resolutions approved by at least a majority of the votes cast in person or by proxy at a duly called meeting at which a quorum has been attained shall be the act of the members, ~~unless a higher vote is specifically required by law or by the Club Declaration.~~

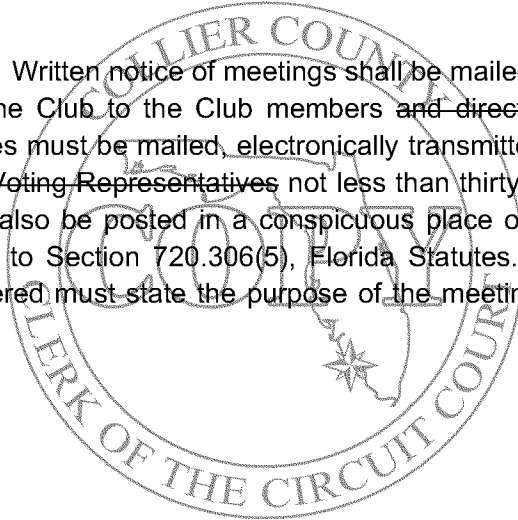


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**Section 3.5** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**3.5 Notice of Meetings.** Written notice of meetings shall be mailed, electronically transmitted or hand-delivered directly by the Club to the Club members and ~~directly by the Club to the Voting Representatives~~. The notices must be mailed, electronically transmitted or delivered by the Club to the Club members and the Voting Representatives not less than thirty (30) days prior to the date of the meeting. Notices must also be posted in a conspicuous place on the Club common areas or may be broadcast pursuant to Section 720.306(5), Florida Statutes. Notices of meetings where assessments will be considered must state the purpose of the meeting and the assessment under consideration.



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**Section 3.7** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be deleted in its entirety and reserved for future use:

**3.7 (RESERVED) Voting Representatives.** ~~Each Neighborhood Association shall appoint and designate in writing to the Secretary of the Club, at least annually by January 1st of each year, the name and address of one individual who will serve as its Voting Representative, or the alternate, if any, for that year. The person will:~~

~~Receive Club notices, but Club notices which pertain to voting matters shall also be sent directly from the Club to each Club member;~~

~~Represent the members of that particular Neighborhood Association at Club meetings;~~

~~Cast the votes of the Club members from that particular Neighborhood Association as mandated via the procedure (and exclusions) contained within Section 2.2 of these Club Bylaws.~~

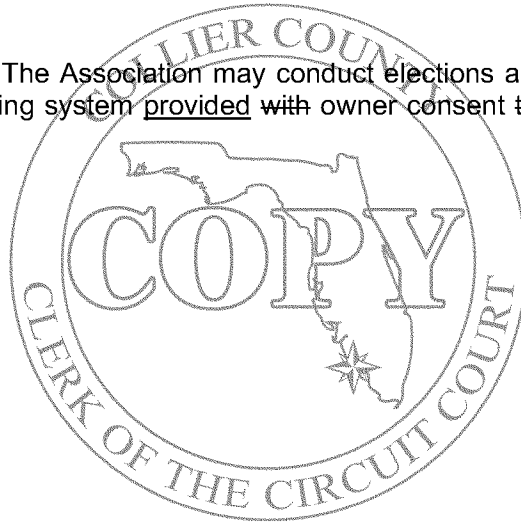
~~An alternate Voting Representative may be designated by a Neighborhood Association to serve in the absence or disability of the Voting Representative. The Voting Representative and the alternate Voting Representative (if any) serve at the pleasure of the entity which appointed them.~~

**AMENDMENT TO THE AMENDED AND RESTATED BYLAWS  
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HERITAGE BAY GOLF & COUNTRY CLUB, INC.**

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**Section 3.14** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**3.14 Electronic Voting.** The Association may conduct elections and other owner votes through an internet-based online voting system provided with owner consent ~~that~~ has been received by the Club.



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**Section 8.2(B)** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**8.2 Suspensions.** The Board of Directors has the right to suspend certain use rights and voting rights in accordance with the provisions of the Declaration and the following:

(B) Suspension of Voting Rights-If Delinquent. The Board of Directors may suspend the voting rights of an owner due to nonpayment of any fee, fine, or other monetary obligation due to the Club which is more than ninety (90) days delinquent. A voting interest which has been suspended shall be subtracted from the total number of voting interests, which shall be reduced by the number of suspended voting interests when calculating the total ~~percentage~~ or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including but not limited to, the ~~percentage~~ or number of voting interests necessary to constitute a quorum, the ~~percentage~~ or number of voting interests required to conduct an election, or the ~~percentage~~ or number of voting interests required to approve an action under the documents. The suspension ends upon full payment of all obligations currently due or overdue to the Club. The notice and hearing requirements do not apply to suspensions imposed for financial delinquencies. Notification of suspension shall be given to the owner by management.

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**Section 9.1** of the Amended and Restated Bylaws of Heritage Bay Golf & Country Club, Inc., shall be amended as follows:

**9.1 Proposal.** Amendments to these Bylaws may be proposed either by a resolution approved by a majority of the whole Board of Directors, or by a petition to the Board, ~~signed by the voting representatives~~ of at least twenty-five percent (25%) of the voting interests of the Club. Once so proposed, the amendments shall be submitted to a vote of the members at a meeting no later than the next annual meeting for which notice can still properly be given.

